

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

Application for Certification for)	Docket No.
the Cosumnes Power Plant Project)	01-AFC-19
_____)	

CALIFORNIA ENERGY COMMISSION

HENDRICKS HALL

12746 IVIE ROAD

HERALD, CALIFORNIA

MONDAY, MAY 12, 2003

9:34 a.m.

Reported by
Peter Petty
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Commissioner Robert Pernell, Presiding Member

HEARING OFFICER AND ADVISORS PRESENT

Garrett Shean, Hearing Officer
Al Garcia, Advisor to Commissioner Pernell

STAFF AND CONSULTANTS PRESENT

Caryn Holmes, Staff Counsel
Kristy Chew, Project Manager

STAFF WITNESSES

Melinda Dorin, CEC Staff
Negar Vahidi, Aspen Environmental Group
Tuan Ngo, CEC Staff
Matthew Layton, CEC Staff
Michael Ringer, CEC Staff

PUBLIC ADVISOR

Robertta Mendonca

APPLICANT

Steven Cohn, Assistant General Counsel, SMUD
Jane Luckhardt, Downey Brand
Maria De Lourdes Jimenez Price, Office of General
Counsel, SMUD

APPLICANT WITNESSES

Terry Huffman, Kleinschmidt, Huffman, Broadway
Ellyn Miller Davis, Davis Environmental Consulting
Debra J. Crowe, CH2M Hill
E. J. Koford, IEC
Paul Olmstead, SMUD
Kevin Hudson, SMUD
Elise Rothschild, County of Sacramento
Glenn Hendrickson, Herald Fire District
James Templeton, Galt Fire District
Richard Holmes, Elk Grove Community Services
District Fire Department
Charlton Atwood, Sacramento Fire District
Steve Redeker, SMUD
Colin Taylor, SMUD
James Shetler, SMUD

APPEARANCES (continued)

INTERVENORS

Kathy Peasha, Community/Self
Michael Roskey, Community/Self

INTERVENOR WITNESSES

Diane Moore
Bob Sarvey

AGENCIES

Dan Gifford, California Dept. of Fish and Game
Ken Fuller, U.S. Fish and Wildlife Service
Aleta Kennard, AQMD
Brian Krebs, AQMD

PUBLIC COMMENT

Michael Boyd, CARE
Jack Peasha (via telephone)

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P R O C E E D I N G S

9:34 a.m.

COMMISSIONER PERNELL: Good morning. My

name is Robert Pernell. I'm the presiding

Commissioner on the SMUD Consumers Project

Committee. With me today is my Advisor, Mr.

Garcia, and Mr. Shean, who is our Hearing Officer.

Commissioner Rosenfeld, the second member of the

committee, is attending other Commission business,

and could not be here today.

The purpose of the Evidentiary Hearing

today and tomorrow is to assemble the record upon

which the Commission will ultimately decide the

disposition of the application for certification

of the Cosumnes Power Plant Project.

While these are largely formal

proceedings, we will provide opportunities for

members of the public to make comments about the

proposed project. At this time I'd like the

parties -- agencies and intervenors -- and our

commission's public advisors to introduce

themselves, and then Mr. Shean will begin the next

phase of the evidentiary hearing.

In terms of introductions, we'll start

with the Applicant.

1 MR. COHN: Good morning, my name is
2 Steve Cohn, appearing on behalf of the Applicant,
3 Sacramento Municipal Utility District. Also with
4 me today is Jane Luckhardt, our co-counsel, and
5 Maria de Lourdes Jimenez Price, as well as Colin
6 Taylor, Project Director, and Kevin Hudson,
7 Project Manager.

8 COMMISSIONER PERNELL: Thank you. Staff
9 please?

10 MS. HOLMES: Thank you, good morning.
11 My name is Caryn Holmes, I'm the staff counsel
12 assigned to this project. With me are Kristy
13 Chew, who is the project manager, and Melinda
14 Dorin, who is the staff biologist on this project.

15 COMMISSIONER PERNELL: Good morning.
16 Welcome. Intervenors?

17 MS. PEASHA: Good morning, my name is
18 Kathy Peasha, I'm intervening on behalf of this
19 community. And with me is Diane Moore, who is
20 testifying and providing testimony on biologicals.

21 COMMISSIONER PERNELL: Thank you. Good
22 morning. Are there any public agencies present?
23 Please step up to the mike and introduce yourself
24 and who you're representing.

25 MR. GIFFORD: My name is Dan Gifford,

1 I'm a biologist with the California Department of
2 Fish and Game.

3 COMMISSIONER PERNELL: Welcome. Any
4 others? All right, at this time we'll hear from
5 our Public Advisor.

6 MS. MENDONCA: Good morning. Thank you,
7 Commissioner Pernell. I'm Roberta Mendonca, the
8 Energy Commission's Public Advisor, and my office
9 will be submitting a -- we call them status report
10 -- of our activities between our last hearing and
11 the wrapup of this hearing, pursuant to the proof
12 of service when it's completed. Thank you.

13 COMMISSIONER PERNELL: Thank you. Is
14 there anyone representing organizations,
15 community-based or otherwise? Seeing none,
16 hearing none. Mr. Shean?

17 HEARING OFFICER SHEAN: Good morning.
18 According to Appendix A, our Order of Testimony
19 that accompanied not only the initial notice of
20 these evidentiary hearings, but was following
21 revision after a second pre-hearing conference
22 sent to you as a hearing order, we're going to
23 proceed this morning with biology, and hopefully
24 we can get into alternatives.

25 We have a little elasticity in our

1 schedule here, but if we can we're going to get as
2 far as we can today, hopefully avoiding returning
3 tomorrow. That's our goal, whether we make it or
4 not we'll see.

5 With that, are there any preliminary
6 matters from any of the parties, and we'll start
7 with the applicant?

8 MR. COHN: Yes, Mr. Shean. We would
9 request that the fire panel, the panel of experts
10 that you requested, be brought on at time certain
11 right after lunch. They all have very important
12 duties to attend to, but they are available as a
13 panel right after lunch.

14 HEARING OFFICER SHEAN: I'll indicate
15 for the record that Mr. Cohn had communicated with
16 me and indicated that these folks did have some
17 time constraints, and what we basically agreed was
18 that at 1:00 we would have these people appear,
19 and that way we can get them here and then off
20 back to their official duties as quickly as
21 possible.

22 And I actually remembered that too, it's
23 down here in my notes. Anything in addition to
24 that?

25 MR. COHN: No, that's it.

1 HEARING OFFICER SHEAN: All right,
2 anything from the staff?

3 MS. HOLMES: Nothing.

4 HEARING OFFICER SHEAN: Ms. Peasha,
5 anything from you?

6 MS. PEASHA: Yes, I would like to
7 consider holding off from the biological part of
8 this hearing, and I would like my witness, Ms.
9 Diane Moore, to explain for us why we think that
10 would be a good idea.

11 HEARING OFFICER SHEAN: Is that
12 different from what appeared in her testimony, or
13 essentially a repeat of it?

14 MS. PEASHA: Excuse me?

15 HEARING OFFICER SHEAN: Is that
16 different from the comments that we received that
17 were filed by you, or at least filed under your
18 name?

19 MS. PEASHA: On the biological?

20 HEARING OFFICER SHEAN: Yes.

21 MS. PEASHA: Or filed by Diane -- it is
22 different, yes it is.

23 HEARING OFFICER SHEAN: All right. Go
24 ahead.

25 MS. MOORE: We're requesting that the

1 testimony on biological resources be postponed. I
2 don't know, maybe we can call this trifurcating
3 the project.

4 There's been a, clearly a plethora, of
5 new information submitted to the Intervenor during
6 the last week, and materials that staff identified
7 in their April 23rd letter as being provided ten
8 days prior to these hearings -- and that was
9 identified as, in order to allow staff and other
10 parties adequate time for review.

11 The information that was identified in
12 the April 23rd letter -- and there are about five
13 items that were supposed to have been provided --
14 there's been a real, what I would consider a
15 meager attempt to provide meaningful responses.

16 And I find that the responses produced
17 by SMUD's consultant looks like something that was
18 thrown together in about an hour and a half.

19 And it's just an insult, I think, to
20 this very stern message that the Commission gave
21 in what needs to be done before these hearings.
22 We saw this information six days ago. I believe
23 that this information -- that was identified as
24 being needed to be provided to staff and other
25 parties ten days prior to the review -- was

1 actually just published on the fifth, which is
2 seven days ago.

3 I've got four kids. I spent my Mother's
4 Day and the rest of my weekend and all of last
5 week pouring through this abundance of information
6 that was delivered to Ms. Peasha on Tuesday night.
7 There has simply been an inadequate amount of
8 review, and it would just be irresponsible to
9 continue at this time.

10 HEARING OFFICER SHEAN: All right.
11 Other parties want to respond?

12 MS. LUCKHARDT: I guess I'll start. We
13 followed the requirements of the hearing order
14 that all our testimony be filed on May 5th, and
15 that's when all the testimony was filed. We also
16 made a considerable effort to make sure that the
17 Intervenors had all of the documents that we had
18 previously filed, some of which were available
19 earlier.

20 Some of this initial information was
21 available in May of '02 -- I'm sorry, I saw May
22 20th and figured it had to be --. There are
23 additional filings that were made throughout the
24 year coming up through -- starting in January of
25 this year -- with different versions of the

1 biological assessment that went in, the wetlands
2 delineation and its various forms, I notice, to
3 all parties for a very long time.

4 We wanted to make sure that they had
5 everything, and so we filed again all of those
6 documents. And we made sure, even though we
7 didn't serve them on every party, that full copies
8 were served on Ms. Peasha at that time, so that
9 she could not appear here today and say that she
10 did not have them, or didn't have access to them.

11 And so we made double filings in some
12 instances of some of those documents. And we
13 filed a hearing order, and we understand that
14 staff had requested things earlier than that, but
15 in a situation as this it is the hearing order
16 that we follow.

17 If we had been able to provide some of
18 those documents earlier -- in response to staff as
19 far as management plans -- they were asking for
20 management plans from the actual mitigation banks
21 that we were going to use. It took some time to
22 get those negotiations finalized, and so we were
23 able to provide those management plans on the day
24 that our testimony was due.

25 So we feel that we have provided

1 adequate information, in fact we've made a huge
2 effort to make sure that they would have
3 everything here today. And, you know, I know Ms.
4 Moore has not been involved in this case the whole
5 time, and had she been involved she may have been
6 aware that these documents were available earlier.

7 But we're ready to go, and we have
8 everything here.

9 HEARING OFFICER SHEAN: All right.
10 Anything from the staff?

11 MS. HOLMES: Staff supports moving
12 forward with the biological resources portion of
13 the hearing today. We did identify, in the FSA,
14 five items that we stated must be submitted prior
15 to evidentiary hearings. I think it's important
16 to understand that we simply wanted to see that
17 these items were continuing to progress.

18 Actually, it's getting towards the end
19 of the process, and we wanted to make sure that
20 nothing was slowing the process down. These
21 documents that we asked for, and SMUD did provide,
22 are evidence that in fact resolution of the issues
23 in biological resources is close at hand.

24 We're ready to proceed, we don't believe
25 that there was anything submitted in those

1 documents that would justify delaying the hearings
2 any further.

3 HEARING OFFICER SHEAN: All right.
4 After consulting with committee, it's the
5 committee's decision that we're going to proceed.
6 If, at the conclusion of the hearings, you have
7 further motion based on the status of the record
8 at that time, of course you can make that.

9 All right. Anything in addition to
10 that? With that, we're going to proceed with
11 biology. The Applicant, having the burden of
12 proof, will be the first party to present it's
13 testimony.

14 MS. LUCKHARDT: Okay, we actually have
15 quite a panel here today.

16 HEARING OFFICER SHEAN: Well, why don't
17 we do this. Everybody who is going to testify who
18 has not been previously sworn, please stand up and
19 we'll administer this oath en masse.
20 Whereupon,

21 MESSRS. HUFFMAN, DAVIS, CROWE, KOFORD, AND DORIN
22 were called as witnesses and herein, after being
23 duly sworn, were examined and testified as
24 follows:

25

1 HEARING OFFICER SHEAN: That was a
2 resounding "I do."

3 MS. LUCKHARDT: Okay. I'm going to go
4 through the preliminaries with each individual,
5 and then I've got a few extra questions, and then
6 they'll be opened as a panel. I'll start with
7 Terry. Mr. Huffman, please state your name and
8 title for the record?

9 MR. HUFFMAN: It's Terry Huffman, I have a
10 Ph.D. in Botany with emphasis in wetland plant
11 ecology. I'm Vice-President with a company known
12 as Kleinschmidt, Huffman, Broadway.

13 MS. LUCKHARDT: And Mr. Huffman's
14 qualifications have previously been filed, but I
15 would like Mr. Huffman to take a moment and
16 describe your experience and knowledge regarding
17 court requirements for 404 permits?

18 MR. HUFFMAN: I served as a research
19 scientist with the Waterways Experiment Station,
20 which is a research laboratory for the Corps of
21 Engineers. My responsibilities dealt with the
22 Corps regulatory program. Initially I developed
23 the Corps definition of wetlands, which EPA and
24 the Corps of Engineers follow. It was published
25 in the federal register.

1 In addition to that, I developed the
2 criteria from which a methodology was devised
3 using soil hydrology and vegetation parameters to
4 identify wetlands. And this methodology is in
5 current use by the Corps of Engineers.

6 Other duties included working on the
7 404B1 guidelines, these are the EPA guidelines
8 which basically provide the criteria for where you
9 can dispose of dredge and fill materials in waters
10 of the United States.

11 In addition to that, I've worked on
12 numerous mitigation projects and also was a expert
13 witness in both federal and state courts related
14 to wetland issues and permitting issues during my
15 tenure.

16 In addition to that, I've served for
17 over 20 years as a private consultant, advising
18 clients in the Corps permitting process. I've had
19 both private clients as well as federal clients,
20 including the Corps of Engineers, EPA, Department
21 of Justice, and public interest clients, including
22 Audobon, Sierra Club, and others.

23 MS. LUCKHARDT: Thank you. And was your
24 testimony previously filed prepared by you or
25 under your direction?

1 MR. HUFFMAN: Yes.

2 MS. LUCKHARDT: And do you have any
3 changes or corrections to your testimony?

4 MR. HUFFMAN: On page four of my
5 testimony, under "evidence," the fourth citation -
6 - where it indicates the Sacramento Municipal
7 Utility District 2003, April 23, 2003 -- should be
8 changed to May 5th, 2003.

9 On page nine of my testimony, third
10 paragraph down under "wetland impacts," the titles
11 "power plant site (temporary impacts)", in the
12 second sentence there's mention of .029 acres of
13 seasonal stream, steam should be changed to the
14 word swale, s-w-a-l-e.

15 MS. MOORE: We don't have a page nine.

16 MS. LUCKHARDT: If you're looking at the
17 testimony as it was filed, as opposed to the
18 individual copy that Terry's looking at, he was
19 just referring to page 32 is how it's printed in
20 the documents.

21 COMMISSIONER PERNELL: We want to make
22 sure everybody's on the same page here. You're
23 saying 32, he said nine.

24 MS. LUCKHARDT: He has an individual
25 copy that just contains his testimony. The

1 testimony that was filed was numbered --

2 COMMISSIONER PERNELL: Do you have a
3 copy so he can refer to that, and everybody will
4 be on the same page here?

5 MS. LUCKHARDT: Yes. Use these page
6 numbers.

7 MR. HUFFMAN: Okay, I'll try this again.
8 On page 27 of my testimony, under "evidence,"
9 fourth citation down, there's reference to April
10 23, 2003. That needs to be changed to May 5th,
11 2003.

12 And on page 32 of the testimony, at the
13 bottom of the page, next to the last paragraph,
14 where it's referenced "power plant site", second
15 sentence, where it mentions .029 acres of seasonal
16 stream, the word stream should be changed to the
17 word swale, s-w-a-l-e.

18 I have no further corrections.

19 MS. LUCKHARDT: Okay. With those
20 corrections to your testimony, are the facts
21 contained in your testimony true and correct to
22 the best of your knowledge?

23 MR. HUFFMAN: Yes.

24 MS. LUCKHARDT: And do the opinions
25 contained in your testimony contain your best

1 professional judgment?

2 MR. HUFFMAN: Yes.

3 MS. LUCKHARDT: Okay. I'll shift to
4 you, Ellen.

5 HEARING OFFICER SHEAN: Why don't we do
6 the offer, and follow on that. Is there any
7 objection to qualifying Dr. Huffman as an expert?
8 Hearing none, is there an objection to admission
9 of his biological resources testimony into
10 evidence as amended? Hearing none, it's
11 submitted.

12 MS. LUCKHARDT: Thank you. Okay, then
13 next I'll turn to Ms. Davis. If you could please
14 state your name and your occupation for the
15 record?

16 MS. DAVIS: My name is Ellyn Miller
17 Davis, and I'm principle and owner of Davis
18 Environmental Consulting.

19 MS. LUCKHARDT: And Ms. Davis' witness
20 qualifications have previously been filed, so I
21 won't have her go back through that, unless anyone
22 is specifically interested at this point. Was
23 your testimony previously filed prepared by you or
24 under your direction?

25 MS. DAVIS: Yes, it was.

1 MS. LUCKHARDT: And do you have any
2 changes or corrections to make to your testimony?

3 MS. DAVIS: No, I don't.

4 MS. LUCKHARDT: And are the facts
5 contained in your testimony true and correct to
6 the best of your knowledge?

7 MS. DAVIS: Yes.

8 MS. LUCKHARDT: And do the opinions
9 contained in your testimony contain your best
10 professional judgment?

11 MS. DAVIS: Yes, they do.

12 MS. LUCKHARDT: Thank you. And then I
13 would ask that we admit Ms. Davis' testimony?

14 HEARING OFFICER SHEAN: Is there
15 objection to qualifying Ms. Davis as an expert?
16 Hearing none, you're qualified. Is there
17 objection to admission of her testimony into the
18 record? Hearing none, it is admitted.

19 MS. LUCKHARDT: Okay. I guess, Terry,
20 if you could pass the mike down to Debra? Next,
21 Ms. Crowe, if you could state your name and your
22 employment for the record, please?

23 MS. CROWE: My name is Debra Crowe. I'm
24 a wildlife and wetlands biologist with CH2M Hill.

25 MS. LUCKHARDT: And Ms. Crowe's

1 qualifications have been previously filed. Was
2 your previous testimony that was filed in this
3 case prepared by you or at your direction?

4 MS. CROWE: Yes.

5 MS. LUCKHARDT: And do you have any
6 changes or corrections to your testimony?

7 MS. CROWE: Yes, I do. I'm going to
8 pass down the correct page numbers. In attachment
9 two, on page one, this is marked "Jennings survey
10 results", he refers to the project as a long power
11 cable. That actually should be changed to a
12 natural gas pipeline.

13 MS. MOORE: Are we in Dr. Jennings's
14 page --

15 HEARING OFFICER SHEAN: We are in what
16 is shown as attachment two, prepared for Debra
17 Crowe. And on the first page, second line,
18 basically changing it from a power cable to a
19 pipeline.

20 MS. CROWE: And in the biological
21 resources mitigation implementation and monitoring
22 plan, section four has misnumbered pages.

23 MS. LUCKHARDT: And if you could
24 identify that, what that was filed with, so that
25 people know where to look. On the front of that

1 should be the data response set.

2 MS. CROWE: That would be the data
3 response -- it's called attachment BR-16B.

4 MS. LUCKHARDT: And John's memo, on the
5 very front of that entire package, will give a
6 date of when it was filed.

7 MS. CROWE: You're looking for the date
8 it was filed?

9 MS. LUCKHARDT: Yes.

10 MS. CROWE: This was filed May 5th.

11 MS. LUCKHARDT: Thank you. Do you have
12 any other changes?

13 MS. CROWE: No, I don't.

14 MS. MOORE: Commissioners? Could I ask
15 a question on these misnumbered pages, because
16 this was -- I've got some problems with the page
17 numbering on my copy, and I don't know if I'm just
18 -- can you elaborate on the misnumbering?

19 COMMISSIONER PERNELL: The last change
20 that you recited? Would you recite that one
21 again?

22 MS. CROWE: Sure.

23 COMMISSIONER PERNELL: I think on the
24 first one you've got a page number. The last
25 change that you recited.

1 MS. CROWE: The page numbers in section
2 four of the --

3 COMMISSIONER PERNELL: The page numbers
4 in section four?

5 MS. LUCKHARDT: I'd help her, but she
6 has my copy. Okay, if you look at section four,
7 it starts with a page number that says 4-1, and
8 then there's a figure without a page number.

9 And then the next page in order is
10 numbered 3-5, and then it continues on with 3-6,
11 3-7, 3-8, 3-9, 3-10, 3-11, 3-12, 3-13, 3-14. And
12 then you get to a chart that is paginated 4-15.

13 There is a computer glitch in which the
14 pagination was misnumbered, but those are all of
15 the pages that should be in the document.

16 So if you look at your copy and you have
17 4-1 followed by figure X, followed by a page
18 numbered 3-5, which proceeds through page number
19 3-14, and then changes to page number 4-15, you
20 have the entire filing.

21 There was some confusion expressed by
22 Ms. Moore, probably caused by the page numbering,
23 as to whether she had the entire document or not,
24 and so we wanted to clarify that we believe she
25 has the entire document but that the page

1 numbering is confusing.

2 MS. MOORE: We don't have the entire
3 document. And what you've described in your copy
4 is entirely different than what's in our copy. We
5 don't even have page 4-1, we don't have any of
6 chapter four, we have a table that's supposed to
7 be in chapter five that starts on page 4-15, we
8 don't have any --

9 COMMISSIONER PERNELL: All right. Can
10 we go off the record a minute please?
11 (Off the record.)

12 COMMISSIONER PERNELL: Back on the
13 record.

14 MS. LUCKHARDT: We have confirmed that
15 all of the pages have gone to everyone, so the
16 Intervenors do have a complete package, although
17 the pagination and the table of contents has some
18 errors, and I'll just ask Debra to go through that
19 quickly so that everyone's clear.

20 MS. CROWE: Page by page?

21 MS. LUCKHARDT: Sure. Start with the
22 table of contents.

23 MS. CROWE: Okay. The table of contents
24 shows section four as being permits required for
25 the project. The permits were rolled up into

1 section three, with the conditions of
2 certification.

3 So, section five here is called "project
4 impacts and mitigation measures for sensitive
5 biological resources within the CPPP project area"
6 -- that should be section four.

7 The rest of the section should follow
8 the same numbering. Section six should actually
9 be section five, section seven is section six,
10 section eight is section seven, and section nine
11 is section eight.

12 MS. LUCKHARDT: So, just to clarify, you
13 can delete from the table of contents the heading
14 that says "4.0 permits required for CPPP project,
15 4-error, bookmarked, not defined."

16 MR. ROSKEY: Excuse me, could I ask a
17 question? Could you tell me where the summary of
18 your qualifications is located?

19 MS. LUCKHARDT: Her qualifications were
20 filed with her testimony, as a part of -- with an
21 extra copy being delivered, so that you can easily
22 access it. With group two, alternatives in
23 biological resources testimony, filed on May 5th.

24 COMMISSIONER PERNELL: Are there any
25 other changes?

1 MS. CROWE: Section four starts with
2 page 4-1, and should continue through 4-15,
3 instead of how it's numbered right now.

4 MS. LUCKHARDT: Do you have any other
5 corrections to your testimony?

6 MS. CROWE: No.

7 MS. LUCKHARDT: With those corrections,
8 are the facts contained in your testimony true and
9 correct to the best of your knowledge?

10 MS. CROWE: Yes.

11 MS. LUCKHARDT: And do the opinions
12 contained therein contain your best professional
13 judgment?

14 MS. CROWE: Yes.

15 MS. LUCKHARDT: Then I would ask that
16 Ms. Crowe's testimony be admitted?

17 HEARING OFFICER SHEAN: Is there
18 objection qualifying Ms. Crowe as an expert?
19 Hearing none, she is so qualified. Is there
20 objection to the admission of her testimony?
21 Hearing none, that is admitted.

22 MS. LUCKHARDT: Okay. I'll turn to Mr.
23 Koford. Could you please state your name and
24 employment for the record?

25 MR. KOFORD: E. J. Koford, testifying on

1 behalf of Cosumnes Power Plant. I'm a senior
2 biologist project manager, and did a lot of the
3 field work associated with this project.

4 MS. LUCKHARDT: And this witnesses
5 qualifications have previously been filed. Was
6 your previous testimony prepared by you or under
7 your direction?

8 MR. KOFORD: Yes it was.

9 MS. LUCKHARDT: And do you have any
10 changes or corrections to your testimony?

11 MR. KOFORD: I do not.

12 MS. LUCKHARDT: Thankfully. Are the
13 facts contained in your testimony true and correct
14 to the best of your knowledge?

15 MR. KOFORD: Yes, they are.

16 MS. LUCKHARDT: And do the opinions
17 contained in your testimony contain your best
18 professional judgment?

19 MR. KOFORD: Yes, they do.

20 MS. LUCKHARDT: I would like to request
21 the admittance of Mr. Koford's testimony at this
22 time?

23 HEARING OFFICER SHEAN: Is there an
24 objection to the qualification of Mr. Koford as an
25 expert? Hearing none, he is so qualified. Is

1 there objection to the admission of the testimony
2 of Mr. Koford? Hearing none, it is admitted.

3 MS. LUCKHARDT: Mr. Olmstead has just
4 joined us, so he needs to be sworn.
5 Whereupon,

6 PAUL OLMSTEAD
7 was called as a witness and herein, after being
8 duly sworn, was examined and testified as follows:

9 MS. LUCKHARDT: Mr. Olmstead, if you
10 could state your name and title for the record?

11 MR. OLMSTEAD: My name is Paul Olmstead,
12 I'm a water and power resource specialist for the
13 Sacramento Municipal Utility District.

14 MS. LUCKHARDT: And Mr. Olmstead's
15 qualifications have previously been filed. Was
16 your previously filed testimony prepared by you or
17 under your direction?

18 MR. OLMSTEAD: Yes.

19 MS. LUCKHARDT: And do you have any
20 changes or corrections to make to your testimony?

21 MR. OLMSTEAD: No, I don't.

22 MS. LUCKHARDT: And are the facts
23 contained in your testimony true and correct to
24 the best of your knowledge?

25 MR. OLMSTEAD: Yes.

1 MS. LUCKHARDT: And do the opinions
2 contained therein contain your best professional
3 judgment?

4 MR. OLMSTEAD: Yes, they do.

5 MS. LUCKHARDT: I would ask that Mr.
6 Olmstead's testimony be admitted?

7 HEARING OFFICER SHEAN: Is there
8 objection to --

9 MS. MOORE: Objection. We don't have
10 Mr. Olmstead's testimony.

11 MS. LUCKHARDT: That should have been
12 filed as a part of the testimony for application
13 for certification, alternatives to biological
14 resources. I believe his testimony was at the
15 very back. Last pages before the resume.

16 MS. MOORE: We've located it. It was
17 just one page, but we can see it there, thank you.

18 MS. LUCKHARDT: Yes, that's all it is.

19 COMMISSIONER PERNELL: All right,
20 proceed, please.

21 HEARING OFFICER SHEAN: In the absence
22 of objection, it will be admitted then.

23 MS. LUCKHARDT: Okay, I just have a few
24 direct questions for the witnesses. And what I'd
25 like to do initially, is to have Mr. Hudson, who

1 has previously been sworn -- there's one
2 additional document that needs to be admitted.

3 It was filed in response to staff's
4 request. It's informal data response, set 16, and
5 contains management plans for conservation
6 resources, Laguna Creek, mitigation bank, and
7 wildlands. And I would ask that Mr. Hudson
8 sponsor that document. Is there any objection to
9 that coming into evidence?

10 HEARING OFFICER SHEAN: Let me just make
11 sure we're on the same page. The cover page for
12 that is "informal data response, set 16, dated May
13 5, 2003." And as you get into that, it's
14 basically the response to data request Bio 12, is
15 that correct?

16 MS. LUCKHARDT: That is correct.

17 HEARING OFFICER SHEAN: With an
18 attachment, Bio-12A.

19 MS. LUCKHARDT: Yes. Attachment Bio-
20 12A. BR-12B is also attached to that, which is a
21 letter from Mr. Cohn to Bob Therkelson, and Bio-
22 12C.

23 HEARING OFFICER SHEAN: Which is a draft
24 of a letter?

25 MS. LUCKHARDT: Which is a draft of a

1 letter, that's correct.

2 HEARING OFFICER SHEAN: Okay. And your
3 sponsor for that is Mr. Hudson, is that correct?

4 MS. LUCKHARDT: Mr. Hudson will sponsor
5 that.

6 HEARING OFFICER SHEAN: Objection?
7 Hearing none, it's submitted.

8 MS. MOORE: Too fast. We do object for
9 the fact that this was supposed to be filed as a
10 management plan, and the BR-12B attachment is just
11 a repeated application for the confidentiality of
12 the designation pursuant to the sections that are
13 followed.

14 MS. LUCKHARDT: We're only asking that
15 the documents included here be admitted. We're
16 not asking that they are considered to be anything
17 that they are not.

18 HEARING OFFICER SHEAN: They are what
19 they are.

20 MS. PEASHA: What are they being
21 admitted as?

22 MS. LUCKHARDT: It's our response to
23 staff, and this is what we filed in response to
24 staff. If you don't like the filing, that's --

25 MS. MOORE: So we're just saying that

1 this is something we can talk about later today?

2 HEARING OFFICER SHEAN: That's correct.

3 MS. MOORE: Oh, okay.

4 HEARING OFFICER SHEAN: All right, it is
5 admitted.

6 MS. LUCKHARDT: Okay, and then I'd like
7 to have Mr. Hudson update everyone on the status
8 of the mitigation for biological resources, the
9 agreements that we've come to so far.

10 MR. HUDSON: There are four areas for
11 mitigation that this project is prepared to
12 address. One area is for giant garter snake, and
13 SMUD has entered into a purchase option for 41.5
14 acres credits for combined aquatics and uplands,
15 Wildlands Bank in south Sacramento County.

16 The management plan is considered by
17 Wildlands to be business confidential, and they
18 would not even share it with SMUD, although they
19 have addressed the California Energy Commission
20 staff directly with that plan. And the bank is
21 cited and pre-approved by the U.S. Fish and
22 Wildlife Service.

23 MS. LUCKHARDT: And Mr. Hudson, is that
24 why the filing on May 5th includes a letter
25 requesting confidentiality?

1 MR. HUDSON: That is correct. For
2 vernal pool preservation SMUD has 19.7 acres
3 credits purchase option, at the conservation
4 resources Laguna Creek mitigating bank, which is
5 about six miles north of the project site.

6 The vernal pool fairy shrimp and tadpole
7 shrimp habitat is there. In addition, there's
8 California tiger salamander habitat at that
9 location, plus wetlands.

10 In addition, SMUD has an option for 3.0
11 creation credits there to purchase, but that would
12 be pending on a meeting that the U.S. Fish and
13 Wildlife Service is having with Conservation
14 Resources today, so that is pending.

15 In order to address that pending issue
16 SMUD also has an option for three acres credits
17 with Wildlands shared mitigation bank for vernal
18 pool fairy shrimp and tadpole shrimp habitat. The
19 management plan for that bank is also business
20 confidential, and that information, to my
21 knowledge, has been conveyed to the Energy
22 Commission as well.

23 The fourth item is Swainson's hawk
24 habitat, 53.9 acres credits, purchase option as
25 conservation resources Laguna Creek mitigation

1 bank, for the Swainson's hawk foraging habitat.

2 Prior sales have taken place for
3 Swainson's hawk credits that have been approved by
4 the California Department of Fish and Game, and in
5 informal data response set 16, one of the letters
6 there is a draft letter for the Department of Fish
7 and Game to sign approving that bank for
8 Swainson's hawk.

9 MS. LUCKHARDT: Thank you, Mr. Hudson.
10 Turning to Ms. Crowe, if you could please describe
11 the project's impact on special status species?

12 MS. CROWE: I passed out a table earlier
13 summarizing the impacts in mitigation for special
14 status species. There's no new information in it,
15 it summarizes information from my testimony that
16 was filed.

17 MS. LUCKHARDT: Does everyone have a
18 copy of that, before we start?

19 HEARING OFFICER SHEAN: Is this the
20 three-page thing or the one-page?

21 MS. LUCKHARDT: This is the one page.

22 HEARING OFFICER SHEAN: Okay.

23 MS. CROWE: Both state-listed and
24 federal-listed species were considered for this
25 project. Three federal-listed species could be

1 affected by the project, and one state-listed
2 species.

3 The state-listed species is the
4 Swainson's hawk, which is at the bottom of this
5 table. It forages on annual grassland habitat.
6 The site for the power plant is annual grassland.

7 MR. ROSKEY: Excuse me, could we have an
8 extra copy of that, because you only laid out for
9 three of us, and there's four of us?

10 MS. CROWE: Through consultation with
11 California Fish and Game, habitat compensation for
12 Swainson hawk forage habitat was mitigated at a
13 one-to-one ratio. The Laguna Creek mitigation
14 bank is where SMUD is purchasing 53.9 acres of
15 Swainson hawk habitat.

16 Within annual grassland -- typically --
17 vernal pools and seasonal wetlands and swales, the
18 seasonal wetlands are habitat for the listed
19 vernal pool fairy shrimp, which is threatened
20 federally, and the vernal pool tadpole, which is
21 endangered federally.

22 SMUD is mitigating for 2.967 acres of
23 direct impacts from the gas pipeline and the power
24 plant site. And they are also mitigating for
25 temporary impacts, or indirect impacts to 6.877

1 acres.

2 The indirect impacts are any vernal pool
3 or seasonal ponding area within 250 feet of the
4 gas pipeline. If any of the boundaries of those
5 wetlands or ponding areas were within 250 feet the
6 entire pool was counted, so there's an
7 overestimation of impacts on the indirect.

8 Mitigation ratios for direct impacts was
9 three to one, and two to one for indirect impacts,
10 bringing the total compensatory habitat for direct
11 impacts to 19.7, and three acres of creation. And
12 Kevin already went through where those credits
13 would be purchased.

14 For giant garter snakes, they inhabit
15 drainage ditches, sloughs, and ponding areas. The
16 gas pipeline will cross some of these drainages.
17 The acreage of the actual drainage itself, plus
18 200 feet on either side, which is the upland
19 habitat for giant garter snakes, was evaluated for
20 impacts.

21 Forty-one point five acres of this
22 habitat would be affected by construction of the
23 gas pipeline. Mitigation ratio is one to one for
24 this type of habitat, and Kevin already went
25 through the mitigation location for the giant

1 garter snake.

2 California tiger salamanders are not
3 listed yet. They are a candidate species for
4 listing. We did find larvae of the salamander
5 three quarters of a mile away from the project
6 site. The annual grassland on the project site,
7 then, is considered aestivation habitat.

8 Preservation of the Swainson's hawk
9 upland habitat and the vernal pool fairy shrimp
10 habitat will also compensate for California tiger
11 salamander.

12 In total, permanent impacts are almost
13 33 acres. The total acres of habitat purchased
14 for all of these species is 118.1 acres,
15 approximately 3.6 times the amount of habitat that
16 would be affected.

17 No habitat for giant garter snake would
18 be lost, it's just temporary construction through
19 habitat, and 41 1/2 acres are going to be provided
20 in perpetuity for those. That's about it.

21 MS. LUCKHARDT: Okay. Ms. Moore, on
22 page two of her testimony, has stated that the
23 impacts analysis is not complete. In your
24 professional opinion, is the analysis of project
25 impacts on special status species complete?

1 MS. CROWE: Yes.

2 MS. LUCKHARDT: Can you elaborate on
3 that?

4 MS. CROWE: For the impact analyses,
5 we've followed the Energy Commission regulations
6 and requirements for analyzing project impacts.
7 Also, negotiated with -- or consulted with -- the
8 U.S. Fish and Wildlife Service, California Fish
9 and Game, Army Corps of Engineers, and National
10 Marine Fishery Service to evaluate the impacts to
11 special status species under their jurisdiction.

12 MS. LUCKHARDT: Thank you. Can you
13 please describe the mitigation to the -- actually,
14 I believe you have described the mitigation for
15 special status species. Is there anything in
16 addition you'd like to add?

17 MS. CROWE: No.

18 MS. LUCKHARDT: In your professional
19 opinion, does the mitigation proposed for special
20 status species adequately mitigate for the impacts
21 of this project.

22 MS. CROWE: Yes. Through consultation
23 with Fish and Wildlife and Fish and Game, the
24 appropriate mitigation measures were developed.

25 MS. LUCKHARDT: Thank you. And turning

1 to Dr. Huffman, if you could please describe the
2 project's impacts to wetlands and waters of the
3 United States?

4 MR. HUFFMAN: Okay. I'm going to
5 explain this by using a table that I handed out
6 earlier.

7 MS. LUCKHARDT: Why don't you describe
8 it for the Court Reporter?

9 MR. HUFFMAN: Does everybody have a
10 copy? I'll describe it. It's a summary of
11 impacts to wetlands and waters of the United
12 States. These areas are regulated under Section
13 404 of the Clean Water Act, which the Corps of
14 Engineers issues permits for dredge and fill
15 impacts to these areas.

16 The second page -- and I'll just go
17 through these to make sure everybody's got these
18 -- the second page is a further summary related
19 to temporary impacts to wetlands and waters of the
20 United States. And it's really extracted from the
21 previous table summary.

22 The third page is labeled "permanent
23 impact to wetlands and waters of the United
24 States." It provides a summary of those impacts
25 and also mitigations.

1 In my discussion I'll refer to the first
2 table. I've looked at impacts in terms of
3 temporary and permanent, and these were described
4 in my testimony that was provided on May 5th.

5 Looking at temporary impacts for the gas
6 pipeline right-of-way, there's a total of 1.723
7 impacts. And these are impacts to various types
8 of wetlands. These are known as vernal pools,
9 seasonal wetlands, freshwater marsh, river and
10 stream habitats, seasonal swales, and drainage
11 ditches.

12 In addition, temporary impacts also
13 occur at the Cosumnes Power Plant proposed site
14 laydown and parking areas, and these impacts total
15 1.194 acres. Now, all temporary impacts are being
16 mitigated by restoring these areas onsite after
17 project work activities occur.

18 I might also add that, as part of the
19 Corps permit process, there's a requirement to
20 avoid and minimize impacts to wetlands and waters
21 of the United States. This was done in the gas
22 pipeline route either by boring underneath various
23 habitats, or by moving the pipeline from side to
24 side to try to avoid as much as possible. So that
25 was a way to minimize.

1 In addition, in the power plant site and
2 laydown area, there was also movement of and
3 design of elements that allow for additional
4 avoidance of impacts. I might add, for mitigation
5 for vernal pools, not only is the restoration
6 onsite happening, but also for the vernal pool
7 impacts, wildlands shared on that site would be
8 used to create a one-to-one ratio mitigation.

9 As far as permanent impacts go, there
10 are no permanent impacts caused by the gas
11 pipeline route. They were all temporary.
12 Permanent impacts caused by the Cosumnes Project
13 laydown and parking areas total 1.307 acres of
14 impacts.

15 Again, the impacts to vernal pools will
16 be mitigated through creation at the ratio of one-
17 to-one at the wildlands Sheridan site. Although
18 Kevin Hudson has mentioned that there's also the
19 Laguna Creek site that could be used, and it's a
20 closer site than the Sheridan site for this
21 mitigation.

22 In addition, looking at the seasonal
23 wetlands, freshwater marsh, river and streams,
24 seasonal swales and drainage ditches, mitigation
25 is being provided at the Wildlands Sacramento

1 site, this is south Sacramento County.

2 And the amount of mitigation for these
3 types of habitats totals 20 acres. This
4 represents a 16.4 to 1 mitigation ratio, which is
5 quite high for these types of impacts.

6 And again, the other two tables are
7 merely excerpts from the first table, and go
8 through the same information I went through
9 previously.

10 I want to add also that the Corps
11 jurisdictional termination, which was made
12 official on February 19th, 2003, identified
13 approximately 47.08 acres of wetlands that could
14 potentially be impacted by the project.

15 SMUD, in their design work and efforts,
16 has avoided and minimized these wetlands to the
17 maximum extent possible, where there's only 4.224
18 acres of total impacts -- that's counting the
19 temporary and permanent impacts.

20 So the project is avoiding 91 percent of
21 the impacts that could have happened as a result
22 of this project through avoidance minimizations.

23 MS. LUCKHARDT: Ms. Moore, in her
24 testimony, disputes the boundaries used for the
25 wetlands survey. In your professional opinion, do

1 the wetlands survey boundaries comply with the
2 requirements of the Corps for delineation of
3 wetlands and waters of the U.S.?

4 MR. HUFFMAN: If I understand Ms.
5 Moore's concern, and looking at it from a
6 standpoint of boundaries of wetlands and waters of
7 the United States, these areas have been
8 designated and officially determined by the Corps
9 of Engineers, and that's the letter I referred to
10 previously that was received from the Corps dated
11 February 19th, 2003.

12 In addition, I have reviewed the various
13 delineation reports and done my own onsite
14 inspections of the various wetlands areas, as well
15 as reviewed aerial photography, mapping, and so
16 forth, and I concur with the finding and I
17 professionally believe that the boundaries are
18 accurate.

19 MS. LUCKHARDT: In your professional
20 opinion, is the analysis of project impacts on
21 wetlands and waters of the U.S. complete, as that
22 term is used by Ms. Moore in her testimony?

23 MR. HUFFMAN: I understand her concern.
24 Yes, I do believe they are complete. The Corps
25 of Engineers has officially identified, or agreed,

1 with the delineation that was conducted by CH2M
2 Hill, and presented to the Corps.

3 And the amounts of impacts that were
4 determined or based on the project footprints that
5 were placed upon that area that was geographically
6 delineated by the court.

7 MS. LUCKHARDT: In your however many
8 years experience, 20-plus years working with the
9 Corps, will the mitigation proposed for project
10 impacts to wetlands and waters to the U.S. be
11 acceptable to the Corps?

12 MR. HUFFMAN: Well, I can't speak for
13 the agency officially, but in my experience, the
14 ranges of mitigation that I've spoke to, or
15 explained, would satisfy them. I agree.

16 MS. LUCKHARDT: Turning to Mr. Koford.
17 Ms. Moore, on pages two and three of her
18 testimony, expresses concern that the wetland
19 delineation survey boundaries do not allow for
20 analysis of project impacts. How does the project
21 impacts analysis account for the United States
22 Fish and Wildlife request to address impacts to
23 vernal pool species?

24 MR. KOFORD: The wetlands delineation is
25 focused only on jurisdictional wetlands for

1 purposes of the Corps. That permit, and those
2 documents, only address the definition of wetlands
3 under Clean Water Act federal guidelines.

4 Impacts to biological resources based on
5 the Endangered Species Act issues are not the same
6 as jurisdictional wetlands. We, in fact, during
7 the course of this project, went out 250 feet to
8 look for vernal pools or wetlands that could hold
9 fairy shrimp, whether or not they were
10 jurisdictional.

11 In addition, the Energy Commission
12 requires us to map habitats out to 1,000 feet.
13 Those are not documented in the jurisdictional
14 wetlands delineation. It's the wrong document for
15 that information. We surely went out that far,
16 and further.

17 MS. LUCKHARDT: Turning to Ms. Crowe,
18 referring to Ms. Moore's testimony at the bottom
19 of page two, she refers to some missing 11 X 17
20 tiles. Is there a reference to such tiles in the
21 BRMIMP, and where would those tiles be located?

22 MS. CROWE: Reference to those in the
23 BRMIMP -- it's appendix E of the biological
24 assessment, not the BRMIMP.

25 MS. LUCKHARDT: Is that your best

1 understanding of what those missing six tiles
2 could be?

3 MS. CROWE: Yes.

4 MS. LUCKHARDT: In addition, Ms. Crowe,
5 Ms. Moore expresses concerns about the burrowing
6 owl and Swainson hawk surveys conducted in April
7 of 2003. How did you determine the parameters
8 under which to conduct your surveys for these
9 species?

10 MS. CROWE: The burrowing owl surveys
11 were conducted under Fish and Game's mitigation
12 guidance document, September 1995. In that
13 document it describes the survey methods that
14 should be used. This was requested by the Energy
15 Commission in their final staff assessment
16 condition of certification BIO-18.

17 MS. LUCKHARDT: And did the survey
18 biologist follow those guidelines?

19 MS. CROWE: Yes.

20 MS. LUCKHARDT: And in your professional
21 opinion, will following those guidelines produce
22 an accurate assessment of the location of owls and
23 hawks?

24 MS. CROWE: It did in this case. The
25 surveys were done in good weather, when owls

1 should be out and could be seen.

2 MS. LUCKHARDT: In addition, Ms. Moore
3 questions the California tiger salamander surveys
4 conducted during this year. Were California tiger
5 salamander surveys conducted in accordance with
6 standard protocols?

7 MS. CROWE: Dr. Mark Jennings did the
8 surveys under the established protocols.

9 MS. LUCKHARDT: And were you able to
10 discuss Ms. Moore's concerns with Dr. Jennings?

11 MS. CROWE: No, I did not.

12 MS. LUCKHARDT: Were protocol California
13 tiger salamander surveys conducted prior to 2003?

14 MS. CROWE: Yes. Mark Jennings had
15 conducted them also in April of 2002.

16 MS. LUCKHARDT: Okay. Shifting back to
17 Dr. Huffman. Did your testimony include the 404B1
18 alternatives analysis?

19 MR. HUFFMAN: Yes, it did. It's part of
20 the Corps permit application and we developed a
21 404B1 alternatives analysis.

22 MS. LUCKHARDT: And was that filed in
23 this proceeding as part of data response set 1Q?

24 MR. HUFFMAN: It was filed the 5th of
25 May, 2003.

1 MS. LUCKHARDT: And did your
2 alternatives analysis review the laydown sites, I
3 believe it's across the street and to the west of
4 the project site?

5 MR. HUFFMAN: Yes.

6 MS. LUCKHARDT: And what did you
7 conclude regarding these two laydown sites?

8 MR. HUFFMAN: Evaluating the two laydown
9 sites, the one to the west and the one to the
10 south, the one to the west had greater habitat
11 values. It's a site that, basically both sites
12 contain vernal pools and other types of wetland
13 features.

14 The south site is heavily grazed, the
15 soils are erodible, but slightly to moderately
16 erodible. The soils on the west side are highly
17 erodible to moderately erodible, and in addition
18 the site has not been grazed for over ten years,
19 so the habitat values are substantially greater in
20 terms of native species and the development of the
21 vernal pools. It's quite a nice area.

22 So, looking at the two, and looking at
23 the site that had less environmentally adverse
24 impact associated with it, if the laydown site
25 occurred either on the west or the south

1 locations, the south would be the preferable site
2 for the laydown.

3 MS. LUCKHARDT: Okay. And are you
4 familiar with Ms. Moore's concerns, expressed in
5 her testimony, about using existing mitigation
6 banks for mitigation of wetland impacts?

7 MR. HUFFMAN: Yes, I've heard of that.

8 MS. LUCKHARDT: And does the Corps have
9 published policy or guidance indicating that
10 mitigation banks should not be used to mitigate
11 wetland impacts?

12 MR. HUFFMAN: Not to my knowledge. They
13 have from time to time had case by case concerns
14 about the use of mitigation banks.

15 For example, in Santa Rosa, California,
16 there's a mitigation bank that was getting heavily
17 used by very large projects. And it was becoming
18 depleted and would not allow smaller scale
19 projects to use the bank, or that was the concern.

20 But overall, to my knowledge there's no
21 firm policy about the mitigation banks should only
22 be used for small scale projects.

23 In fact, I might add that the levels of
24 mitigation that are occurring as far as wetlands
25 and waters of the United States is concerned, for

1 the project of this size, are relatively small to
2 very small, considering other projects.

3 I've permitted projects that have over
4 20-plus acres of direct impacts to wetlands and
5 waters. So, when you talk 4.25 acres that's
6 pretty low.

7 MS. LUCKHARDT: And you referred to the
8 situation in Santa Rosa, so is it your opinion
9 that does not apply to this case?

10 MR. HUFFMAN: It's my opinion that it
11 does not apply, yes.

12 MS. LUCKHARDT: Thank you. I have no
13 further questions for this panel. I do have one
14 question though, Mr. Shean. I'm wondering if
15 maybe we should mark these as Exhibits, the two
16 tables that we've been referring to?

17 HEARING OFFICER SHEAN: Why don't we do
18 that since they will probably be referred to in
19 either further testimony or cross-examination.

20 Why don't we take them in the following
21 order: the one-page summary of special status
22 species habitat compensation would be Exhibit 5, I
23 believe, is the next in order; and the three-page
24 summary of impacts to wetlands and waters of the
25 United States would be Exhibit 6.

1 And why don't we see if there's
2 objection to the admission of those, I think they
3 just recapitulate other information appearing in
4 the written testimony of the witnesses who --

5 MS. PEASHA: Yes, we do object to that.

6 HEARING OFFICER SHEAN: All right. What
7 is your objection?

8 MS. PEASHA: On the basis that this is
9 new information to us, and receiving it today we
10 haven't had time to really study the whole package
11 that they have just given us.

12 MS. LUCKHARDT: The information
13 contained in Exhibit 5 can all be found within the
14 biological assessment, I believe. In Ms. Crowe's
15 testimony, she's reminding me. But for the
16 mitigation locations, which were just finalized at
17 the end of last week and we thought would be
18 helpful for everyone, that would be the last two
19 columns of that table, which is the negation
20 location and the total acres.

21 When you refer to Exhibit 6, I believe
22 all of that information was taken from the 404B
23 application that was a part of Dr. Huffman's
24 testimony, and filed on May 5th as well.

25 HEARING OFFICER SHEAN: All right. The

1 witness's did testify that this was recapitulated
2 information, now apparently but for the mitigation
3 locations, and that in and of itself is not
4 sufficient to not admit it into evidence, so I'm
5 going to admit Exhibits 5 and 6.

6 Now, we'll go to cross-examination of
7 the Applicant's panels. Are there any questions
8 by the Commission staff?

9 MS. PEASHA: Can I ask that we take a
10 short break?

11 HEARING OFFICER SHEAN: We can take a
12 brief break, and when we come back I'd like you to
13 tell me, with respect to your cross-examination,
14 what your trying -- what you believe about the
15 information that is being presented, or at least
16 what you believe about the information that's
17 being provided.

18 I want to understand, first of all, is
19 it that the Applicant has failed to identify
20 impacts either to species or wetlands, and
21 essentially their count is too low or they have
22 not identified certain areas? Or that they have
23 identified the areas or the impacts, but they're
24 not being effectively mitigated?

25 So I can understand the relevance of the

1 questions that you may be asking to the
2 information the Commission ultimately needs to
3 have to deal with the case. So, we'll take a ten-
4 minute break here, you can collect your thoughts,
5 and hopefully compress your thoughts.

6 (Off the record.)

7 HEARING OFFICER SHEAN: Back on the
8 record. Ms. Holmes?

9 MS. HOLMES: Thank you, Mr. Shean.
10 During the break we noticed that in Exhibit 6,
11 which was a table of summary of the waters and
12 wetlands of the U.S., there appears to be a
13 transpositional error in the second column, which
14 is gas pipeline right-of-way acres, down at the
15 bottom.

16 The sub-total and the total should be
17 the same, I believe, but I don't know which is the
18 correct number. Perhaps Dr. Huffman could
19 clarify?

20 MR. HUFFMAN: The correct sub-total
21 amount should be 1.723.

22 MS. HOLMES: Thank you.

23 MR. HUFFMAN: Your welcome.

24 HEARING OFFICER SHEAN: All right. We
25 will amend the official copy of Exhibit 6. And

1 we'll go with Ms. Peasha, it's your turn.

2 MS. PEASHA: My witness, Diane Moore,
3 will be questioning, if that's allowable?

4 HEARING OFFICER SHEAN: Yes, Ms.
5 Mendonca asked me if that would be okay, and given
6 her familiarity with the area, it may help to
7 expedite and clarify the record if Ms. Moore does
8 the questions.

9 If you could just address the matter we
10 asked before, before you commence your cross-
11 examination, the committee would appreciate it.

12 MS. MOORE: Our main concern here today
13 is that the project impacts have not been
14 adequately or appropriately quantified, and I'm
15 actually less concerned about this sort of out
16 there somewhere mitigation, because usually you
17 can find mitigation that will work.

18 But we're more concerned about the
19 adequacy of the inventory of resources and then
20 the subsequent analysis of impacts to those
21 resources.

22 So, is that --

23 HEARING OFFICER SHEAN: So,
24 fundamentally, you think the numbers -- first of
25 all, you think the numbers of species are

1 insufficiently identified, or there are species
2 out there that should be on the list that aren't?

3 MS. MOORE: I think we've got the
4 species button down pretty well, I don't know of
5 any -- I'm not going to bring up any mystery
6 species today.

7 HEARING OFFICER SHEAN: Okay. So then
8 we're talking about numbers of acres, is that
9 right?

10 MS. MOORE: Numbers of acres,
11 particularly related to the wetlands, is a big
12 issue, as well as numbers of acres of impacts of
13 habitats of sensitive species, and really the
14 ability of anybody at this point in time, with the
15 date that's on the table, to actually quantify
16 those impacts.

17 I don't think that we have the
18 fundamental inventory that -- unfortunately after
19 how many years they've been working on trying to
20 put this stuff together -- you've got to have the
21 information in order to do the impact analysis.

22 So I'm finding the information lacking,
23 and that leads to a weak impact analysis, really
24 an incomplete analysis, so that's kind of the
25 heart of the concern.

1 HEARING OFFICER SHEAN: Okay. Let me
2 just indicate, for the committee's purposes, we
3 have a lot of experience in our past of people
4 having a difference of approach. Some
5 professional's want something done one way, others
6 want it done a different way or this, that, or the
7 other.

8 And ultimately what we come down to at
9 the end of the day is have the impacts been
10 adequately identified, and have they been
11 adequately mitigated?

12 And so, I guess what I'm trying to find
13 out from what you're saying is, as you either --
14 just for example, as you look at Exhibits 5 and 6
15 that you've been given that summarize the
16 information, is that where you want to go to
17 essentially indicate what shows in the totals
18 columns, in terms of total impacted acreage, that
19 those acre numbers are too low and should be
20 higher, and if higher by how much. Is that part
21 of the thrust of where you're going?

22 MS. MOORE: Yeah, I'm not in charge of
23 doing the impact analysis, so yes, they are
24 underestimated, that's the big flaw.
25 Underestimation.

1 HEARING OFFICER SHEAN: Okay, and that's
2 what you think your cause is going to show us?

3 MS. MOORE: I think it'll show it quite
4 clearly. I've got a lot of questions laid out.
5 This is going to take a bit of time. I'm not
6 going to try and waste time, I 'm just going to
7 try and hit on some salient points.

8 I really do feel that this is very
9 premature for you guys to make a decision in light
10 of the shambles that this environmental review
11 process is in.

12 When you concur that maybe we should
13 come back another day to talk about biology, I
14 really -- you know, I'm running a company, I've
15 got other things I could be doing today -- I'd
16 much rather come back after the impacts are
17 appropriately quantified, and say "yeah, you guys
18 have done a good job, we're happy."

19 HEARING OFFICER SHEAN: No, no. We're
20 just trying to find out the direction of your
21 cross. Go ahead, please.

22 MS. MOORE: Well, I've written up
23 questions for everybody but Mr. Olmstead. I
24 didn't know if you were going to be here today,
25 and I didn't really have that much to contest with

1 your stuff. Let me just start with a couple of
2 questions for Debra?

3 MS. LUCKHARDT: If that's the case, I'm
4 wondering if we can let Mr. Olmstead go, if no one
5 else has questions of Mr. Olmstead?

6 HEARING OFFICER SHEAN: If he'd like to
7 leave --

8 MS. LUCKHARDT: He's requested to be
9 here as short a time as possible. If there are no
10 other --

11 HEARING OFFICER SHEAN: Do you have a
12 fisheries question? Do you have objection to
13 releasing Mr. Olmstead as a witness?

14 MR. ROSKEY: Is this on?

15 HEARING OFFICER SHEAN: Would you
16 identify yourself for the record?

17 MR. ROSKEY: I'm Mike Roskey. And I
18 think he should be here, because I'm going to have
19 a question that might have something to do with
20 fisheries.

21 MS. LUCKHARDT: Okay, we'll have him
22 stay.

23 MS. MOORE: Okay, Debra.

24 HEARING OFFICER SHEAN: And let me
25 just -- with our semi-formal proceedings here,

1 since we're not on the front porch sipping Coke,
2 if you'll just refer to Ms. Crowe as such, please.

3 MS. MOORE: Okay. I was just going to
4 ask if I could call her Debbie because I've never
5 called her Debra before.

6 HEARING OFFICER SHEAN: Okay.

7 MS. MOORE: Ms. Crowe, your resume
8 indicates that you're experienced in CEC power
9 plant licensing projects. About how many projects
10 have you worked on?

11 MS. LUCKHARDT: Excuse me, are we
12 questioning Ms. Crowe's qualifications? If so --

13 HEARING OFFICER SHEAN: Well, it may be
14 foundational, so we'll allow this, let's see where
15 it goes.

16 MS. CROWE: I've worked on four power
17 plant projects under the Energy Commission
18 regulations.

19 MS. MOORE: And in how many of those
20 projects has the environmental review process been
21 bifurcated?

22 MS. CROWE: I'm not sure what you mean
23 by bifurcated.

24 MS. MOORE: Where the evidentiary
25 hearings and the environmental review process was

1 basically separated into -- I don't know why I'm
2 explaining what bifurcation is, I'd never heard of
3 it before this project either.

4 But basically, that we reviewed a couple
5 of months ago a land use in a variety of resource
6 areas that were somehow integrally connected with
7 what we're talking about today, and yet they were
8 pulled apart and analyzed in two separate times.
9 Has that happened on any of the others you've
10 worked on?

11 MS. LUCKHARDT: Mr. Shea, I believe we
12 discussed this at the last hearing, about the fact
13 that many Energy Commission proceedings have some
14 subject areas that are heard in one hearing and
15 others in another. Do we want to repeat this?

16 HEARING OFFICER SHEAN: Well, I'm just
17 not sure where you want to go with this. What's
18 the relevance --

19 MS. MOORE: I'm just asking if this is
20 the only project that she's worked on where it's
21 been bifurcated.

22 HEARING OFFICER SHEAN: Okay. I'm going
23 to sustain the objection since it doesn't go to a
24 substantive point that's going to affect our
25 decision.

1 MS. MOORE: Okay, I will move on then.

2 HEARING OFFICER SHEAN: Thank you.

3 MS. MOORE: Anyway, in these four
4 projects that you've worked on, did the presence
5 -- in any of them -- did the presence of
6 sensitive biological resources or wetlands change
7 either the location or the ultimate configuration
8 of the power plant?

9 MS. CROWE: Yes.

10 MS. MOORE: In about how many of these
11 projects did it change due to sensitive resources?

12 MS. CROWE: All of them.

13 MS. MOORE: Of all these energy projects
14 that you've worked on, have you been back to them
15 during or after construction to see -- have you
16 been back to any of them?

17 MS. CROWE: Yes, all of them.

18 MS. MOORE: And on your return visits,
19 did you take a look at the success or lack of
20 success of the mitigation measures that you
21 proposed?

22 MS. CROWE: Yes.

23 MS. MOORE: That's a good return record.
24 You are being paid to be here today?

25 MS. CROWE: Yes.

1 MS. MOORE: Looking at what's been
2 called the summary section of your testimony, you
3 make an identical statement that is also found in
4 the summary section of Mr. Koford's testimony.

5 And I'm going to just read the quote,
6 "project design and implementation of the
7 conditions of certification will ensure that the
8 project will be in compliance with laws, etc." --
9 and you spell out the laws -- "and that any
10 potential impacts will be mitigated to a level of
11 insignificance." Now who actually authored this
12 phrase, was it you, did you write this in your
13 testimony?

14 MS. CROWE: I'm sorry, what page?

15 MS. MOORE: It's in the summary section
16 of your testimony, I believe it's on the second
17 page of your testimony. It's on the first page,
18 second paragraph from the bottom.

19 MS. LUCKHARDT: Mr. Shean, as typically
20 in testimony, I asked whether it was prepared by
21 her or under her direction, so --

22 HEARING OFFICER SHEAN: Well, we heard
23 that. If you have the question in mind, why don't
24 you go ahead and answer it. If the witness has
25 the question in mind --

1 MS. LUCKHARDT: Do you remember what the
2 question was?

3 MS. MOORE: I'm just asking, in the
4 summary question here, the second paragraph of the
5 summary section makes a very broad summary that
6 everything's fine and everything's going to be
7 fine about this project, and I see this same
8 phrase in everybody's testimony, and I'm just
9 wondering if you wrote that paragraph?

10 MS. CROWE: I did not write that
11 particular sentence, but I agree with it.

12 MS. MOORE: Do you think that it's
13 appropriate to make this sweeping statement --
14 today, or last week or whenever your testimony was
15 written -- do you think we're at a conclusionary
16 point in time to make this type of a statement --
17 when protocol level surveys for sensitive species
18 such as Swainson's hawk and burrowing owl are not
19 yet done, and also in light of the fact that
20 direct and indirect impacts to wetlands have not
21 yet been accurately quantified, and that the 404
22 permitting process is in a state of chaos, from
23 what I can tell, and that the section seven
24 consultation of the Fish and Wildlife Service has
25 just been done?

1 In light of the fact that there's all
2 these gaps --

3 HEARING OFFICER SHEAN: Let me just help
4 you out here. There's something called a compound
5 question, and it's got a comma and a and at the
6 end. So you ask the question and you condition it
7 here and you condition it here and you condition
8 it here, and now the question is so loaded up with
9 basically qualifiers, the nugget that you want to
10 get you can't get.

11 So, since you've listed all these things
12 -- the fundamental question that you had is, in
13 light of current analytical and permitting
14 circumstances, do you believe that a conclusion
15 that you have stated is appropriate at this time?
16 Isn't that fundamentally what your question is?

17 MS. MOORE: Yes. I'd say, in light of
18 the level of inventory and completeness of the
19 impact analysis -- or incompleteness of the impact
20 analysis -- in light of the status of the
21 inventory and the status of the impact analysis,
22 do you think it's defensible to make a conclusion
23 that any and all impacts would be mitigated to a
24 level of insignificance?

25 MS. LUCKHARDT: Again, I would object to

1 the appearance of the question, and that the
2 analysis is incomplete.

3 HEARING OFFICER SHEAN: Well, the
4 committee has in mind the intent and purpose of
5 the question that the witness has in mind.
6 Whether you think making the testimony as you
7 did -- the comprehensive statement in your
8 testimony -- if you can answer that, please do.

9 MS. CROWE: Well, the surveys were done
10 by the final staff assessment requirements. There
11 is no official protocol for burrowing owl surveys
12 under the Fish and Game mitigation guidelines,
13 which is the guidelines we used.

14 There's no official Swainson hawk survey
15 protocol. There are guidelines for that also.
16 As far as wetlands, they were delineated under the
17 wetland delineation manual.

18 HEARING OFFICER SHEAN: And so do you
19 conclude therefore that your statement that any
20 impacts that there are will be mitigated to a
21 level of insignificance was well-founded?

22 MS. CROWE: Yes. Through consultation
23 with Fish and Wildlife Service and California Fish
24 and Game and the relevant areas, then yes the
25 mitigation is appropriate for the impacts.

1 MS. MOORE: Thank you. Do you have
2 written correspondence from Fish and Game or Fish
3 and Wildlife Service regarding these
4 consultations?

5 MR. KOFORD: Can I take it? E.J.
6 Koford. Yeah, we've been corresponding with the
7 Fish and Wildlife Service and the agencies for 18,
8 20 months. We do have correspondence.

9 MS. MOORE: Do you have a Biological
10 Opinion?

11 MR. KOFORD: We do not.

12 MS. MOORE: Do you have any written
13 comments from the Fish and Wildlife Service on
14 whether or not they concur with the proposed
15 mitigation?

16 MS. LUCKHARDT: I believe that both the
17 Fish and Wildlife Service and Fish and Game are
18 here and can testify.

19 HEARING OFFICER SHEAN: Okay. But she's
20 asking whether you possess written correspondence
21 that addresses that. If you're objecting, I'll
22 overrule it.

23 MR. KOFORD: I'm not objecting, I want
24 to be clear about my answer, but we provided draft
25 biological assessments to the Service and Fish and

1 Game. We interacted with them in meetings and
2 telephone consultations. They raised issues which
3 we addressed.

4 So, while they haven't directly said "we
5 concur with your results" or anything as
6 conclusive as the Biological Opinion, they
7 participated in authorship of the document. So I
8 think their interests are represented, yes.

9 MS. MOORE: Debra, are you -- I'm sorry,
10 Ms. Crowe, are you involved with the processing of
11 the 404 permit application currently?

12 MS. CROWE: No, I'm not.

13 MS. MOORE: Are you aware that the
14 application submitted by Dr. Huffman to the
15 Corps -- and I'm sorry if I'm not clear here, Dr.
16 Huffman, but I have April 23rd, but was it
17 submitted on May 5th, is that --

18 MR. HUFFMAN: Yes. We submitted an
19 application to the Corps on May 5th this year.

20 MS. MOORE: Okay. I just need to
21 clarify a little confusion then before I go on
22 with this question.

23 One of the items that was provided to us
24 last Tuesday, six days ago, was a April 23rd
25 revised permit application submitted to the Corps

1 of Engineers transmitted by SMUD, and I'm unclear
2 if there's been a subsequent application
3 submitted, or where this May 5th is coming from.

4 Dr. Huffman, could you just clarify, am
5 I looking at the wrong document?

6 MR. HUFFMAN: What it is it's a revision
7 to the document that was originally submitted, and
8 it stands as the current application.

9 MS. LUCKHARDT: If I could just clarify.
10 The April 23rd date is the date it was submitted
11 to the Corps, the May 5th date was the date that
12 we filed it with the Energy Commission. It is the
13 same document.

14 HEARING OFFICER SHEAN: So, just to
15 clarify, it's the same document. What is dated
16 April 23 to the Corps and filed with the
17 Commission on May 5th are one and the same. The
18 May 5th does not represent a revision and change
19 to what was filed on April 23, is that correct?

20 MS. LUCKHARDT: The only revision to the
21 April 23 document, I believe, is the addition of
22 the alternatives analysis, which is attached to
23 that document.

24 But the application itself, the one that
25 has a cover on it and says April 23rd, 2003, with

1 the attachments, but for the alternatives
2 analysis, was submitted to the Corps on April
3 23rd, and filed with this Commission on May 5th.

4 HEARING OFFICER SHEAN: All right.

5 MS. MOORE: Is there an alternatives
6 analysis out there that I'm not aware of that's
7 been submitted to somebody on May 5th?

8 MS. LUCKHARDT: On May 5th, as a part of
9 the Corps application that was filed with this
10 Commission, is the alternatives analysis.

11 MS. MOORE: Are you referring to the
12 alternatives analysis -- that three or four page
13 one that's embedded within Dr. Huffman's testimony
14 -- or are we talking about a full-fledged
15 alternatives analysis?

16 MS. LUCKHARDT: I am referring to the
17 data response set 1Q that was filed on May 5th
18 that contains the 404 permit application and the
19 alternatives analysis.

20 MS. MOORE: Could I see a copy of this
21 document?

22 MS. LUCKHARDT: And it was filed and
23 served on Ms. Peasha.

24 MS. MOORE: This is a document that was
25 finalized -- has it been submitted to the Corps?

1 MS. LUCKHARDT: The April 23rd '03
2 application has been submitted. Mr. Huffman will
3 have to remind me as to whether the alternatives
4 analysis has been submitted to the Corps.

5 MR. HUFFMAN: The revisions to the
6 application that were sent in on May the 5th and
7 on May the 8th we provided them with an
8 alternatives analysis, which is the same copy that
9 you have that's dated May 5th.

10 MS. MOORE: Has that been submitted to
11 the Corps?

12 MR. HUFFMAN: Yes, it has.

13 MS. MOORE: Okay, on what day was it
14 submitted to the Corps?

15 MR. HUFFMAN: May 8th.

16 MS. MOORE: Okay, thank you. Was this
17 document provided on Tuesday to Ms. Peasha?

18 MS. LUCKHARDT: Mr. Carrier is letting
19 me know that this did go to Ms. Peasha, it's dated
20 May 5th, and I believe that's when the proof is
21 dated on this document as well.

22 MR. ROSKEY: If I may, can I make a
23 point concerning that? I received notice at my
24 residence last week, mid-week, that there was a
25 package for me at the post office. I was only

1 able to pick it up this morning. It contains
2 that, I believe. So I don't believe that's really
3 enough time to look at something like that.

4 MS. LUCKHARDT: I believe Mr. Roskey is
5 on both e-mail and direct mail. This document was
6 sent both by e-mail and direct mail.

7 MR. ROSKEY: I am just recovering from
8 surgery, I have not been in to work. If you could
9 understand that that is where I receive my e-mail.

10 MS. LUCKHARDT: Okay. Okay, we have
11 confirmed that this was received by Ms. Peasha on
12 the 6th, at 9:40 in the morning.

13 HEARING OFFICER SHEAN: All right.

14 MS. MOORE: Thank you.

15 HEARING OFFICER SHEAN: Thank you.

16 MS. MOORE: This kind of goes back to
17 what I have done since getting out of work on
18 Tuesday. I started out with a box of documents
19 that I sorted through on Tuesday night. Wednesday
20 night we met with Roberta to review what we were
21 doing.

22 I spent all weekend pouring through all
23 this information, and with this inadequate period
24 of time I didn't even look at this document. We
25 can't even locate it in the box of stuff that we

1 have. Of course, the box of stuff that we were
2 given has, you know, the six missing tiles that
3 we've already talked about, but we'll get on with
4 that.

5 Ms. Crowe, are you aware that the
6 application submitted to the Corps by Dr. Huffman
7 on May 23rd, supplemented with additional
8 information given to them on May 8th, was
9 described to me by Corps staff last Thursday as
10 inadequate to publish the public notice. Are you
11 aware that that application is inadequate?

12 MS. LUCKHARDT: I would object to that
13 question going to Ms. Crowe, she is not
14 responsible nor did she sponsor the Corps
15 application. That is being sponsored by Mr.
16 Huffman.

17 HEARING OFFICER SHEAN: If you ask it of
18 the panel. Can you understand --

19 MS. MOORE: Well, before -- let me just
20 introduce it a bit differently if I'm going to
21 give it to Dr. Huffman. I talked to Justin Cutler
22 on Thursday, and he indicated at that time that
23 the application package did not have adequate
24 information to publish a public notice.

25 MS. LUCKHARDT: Is Ms. Moore testifying

1 or asking questions?

2 MS. MOORE: I'm just asking if you are
3 aware of where the inadequacies lay?

4 MR. HUFFMAN: Yes.

5 MS. MOORE: Can you summarize the
6 deficiencies as far as information that you
7 believe still needs to be submitted to the Corps?

8 MR. HUFFMAN: Where we are in the
9 process is, we submitted a revised application on
10 May the 5th. Justin Cutler of the Corps of
11 Engineers was provided an alternatives analysis on
12 May the 8th.

13 Prior to May the 8th I had a
14 conversation with Mr. Cutler where he asked for
15 additional information, which included 8 1/2 X 11
16 sized drawings of the project so he could publish
17 the public notice.

18 In addition to that, he asked for
19 detailed drawings related to a settling basin and
20 outfall structure design, which I am preparing to
21 provide to him as soon as these hearings are over.

22 I might add that the drawings -- other
23 than the basin and outfall structure, the tension
24 basin or settling basin for the Cosumnes power
25 plant site -- other than that have been provided

1 to him for review, as well as he asked for an
2 impact summary of all the different wetlands that
3 were located within the project area as well as
4 the impacts, and I'm waiting for his response.

5 MS. MOORE: Has the revised -- when I
6 talked to him on Thursday he indicated that the
7 impact analysis had not been completed and he was
8 looking to you to get complete impact information
9 in the future. Have you finished that?

10 MR. HUFFMAN: Yes, I have. And that was
11 provided to him by e-mail.

12 MS. MOORE: Is it the same information
13 as in this table here, this Exhibit 6?

14 MR. HUFFMAN: Yes, he just wanted it
15 broken down into categories that were more clear,
16 related to what the impacts were related to the
17 laydown area versus the laydown parking area
18 versus the power plant site versus the pipeline
19 route.

20 And then also by different habitat
21 types, you know, vernal pool versus seasonal
22 wetlands, etc.

23 MS. MOORE: Okay. I'm going to just
24 kind of change gears here, because I think I've
25 got to establish a little more information before

1 I ask some of these conclusionary type questions.

2 Ms. Davis, your testimony states that
3 you studied the wetlands within a few of the
4 preliminary potential corridors for the pipeline a
5 couple of years ago. How wide were your
6 corridors?

7 MS. DAVIS: To address the CEC
8 requirements we had 2,000 foot wide corridors, and
9 we evaluated four alternative alignments.

10 MS. MOORE: Thank you. And the width
11 was chosen based on the 2,000 feet, was that the
12 CEC standard?

13 MS. DAVIS: At the time, when I spoke
14 with Rick York at CEC, he concurred that that was
15 the standard.

16 MS. MOORE: Okay. Are you familiar with
17 the programmatic consultation for vernal pool
18 species between the Corps of Engineers and the
19 Fish and Wildlife Service?

20 MS. DAVIS: This is the programmatic
21 agreement?

22 MS. MOORE: Uh-hmm.

23 MS. DAVIS: Yes, I am.

24 MS. MOORE: Can you briefly describe
25 that consultation?

1 MS. DAVIS: I haven't been participating
2 in that consultation for this project.

3 MS. MOORE: I'm talking about the
4 programmatic consultation that's already existing
5 between the Fish and Wildlife Service and the
6 Corps of Engineers that relates --

7 MS. DAVIS: I can explain my
8 understanding of that.

9 MS. LUCKHARDT: I would ask a question
10 on relevance here. We aren't using the
11 programmatic agreement, so I'm wondering whether
12 this is relevant to this project or not.

13 MS. MOORE: I think the programmatic
14 consultation between the Service and the Corps
15 that's used to evaluate impacts to vernal pools
16 contains standards that are relevant to any
17 environmental review where you have a parallel
18 consultation going on, whether it's programmatic
19 or non-programmatic.

20 HEARING OFFICER SHEAN: Okay. Well, why
21 don't we -- we've got to march through this a
22 little bit. You've got to lay the foundation to
23 ask her if she used them by first asking her if
24 they did use it, and then if she knows what they
25 are.

1 MS. MOORE: Okay. Do you, are you
2 familiar with --

3 HEARING OFFICER SHEAN: No. Did you use
4 it is the first question.

5 MS. MOORE: Okay. Well, I don't think
6 she used it, so --

7 HEARING OFFICER SHEAN: Whether it was
8 used in preparing any of the --

9 MS. MOORE: Ms. Miller, do you know what
10 distance, in feet, is identified by the Fish and
11 Wildlife Service as being far enough away from a
12 construction activity that you would not impact a
13 vernal pool. How far away do you have to be, in
14 their eyes in your experience that you've seen,
15 that they would say "you're not impacting this
16 pool?"

17 MS. DAVIS: The programmatic agreement
18 states that anything within 250 feet of a
19 construction zone is considered indirectly
20 affected. However, I've had other projects where,
21 because of hydrology and we were under the
22 programmatic, that that was variable, that varied.

23 MS. MOORE: So if construction occurs
24 like in a vernal pool, like if you trench right
25 through a vernal pool, so if it occurs within a

1 vernal pool or seasonal wetlands swale, or within
2 250 feet of that vernal pool or seasonal wetlands
3 swale, then the Fish and Wildlife Service would
4 generally, under most situations, consider it to
5 be at least indirectly impacted, and they would
6 require mitigation?

7 MS. DAVIS: That's the premise under
8 which I generally enter into negotiations with the
9 Fish and Wildlife Service. If I was -- I didn't
10 do it on this project. I know this project did
11 quantify impacts to vernal pools as indirect
12 anything that was within 250 feet of the pipeline
13 corridor.

14 MS. MOORE: So, is this 250 foot rule in
15 your professional experience, I mean that's
16 standard, that's something that's pretty routinely
17 used in impact analysis?

18 MS. DAVIS: Correct.

19 MS. MOORE: Do you think that in the
20 situation where you're building a, where your
21 construction is down at the bottom of the hill and
22 the vernal pool is at the top, do you think that
23 that 250 foot rule would be appropriate in that
24 situation?

25 MS. LUCKHARDT: Again, I don't know

1 where this is going, but -- I think she's
2 qualified to answer it, but I don't know --

3 HEARING OFFICER SHEAN: Is there such a
4 situation as far as you know along the pipeline
5 route? I mean, or is it just a -- it has to be
6 relevant.

7 MS. MOORE: I'm just trying to establish
8 that when you're looking at relatively flat
9 landscapes that 250 feet is something that makes
10 sense. Whereas in a situation where you've got a
11 wetland on the top of the hill and you're working
12 100 feet down at the bottom of the hill that that
13 standard would probably not apply.

14 MS. LUCKHARDT: I guess the question I
15 have is, does Ms. Moore believe we didn't use 250
16 feet, and do we need to go through this?

17 MS. MOORE: We'll go through it if the
18 Hearing Officer says we will.

19 HEARING OFFICER SHEAN: It has to be
20 relevant. Is your hypothetical of the hill and
21 the bottom of the hill one that is in this
22 particular proceeding?

23 MS. MOORE: No. Let's just move on with
24 the 250 feet, then. I don't need to be getting
25 you guys off on a weird tangent here. I'm sorry.

1 Have you read the FSA for this project?

2 MS. DAVIS: Briefly, yes.

3 MS. MOORE: Well, in the FSA, on page
4 4.2-18, CEC staff also repeat this 250 foot
5 distance.

6 And they say "due to the nature of
7 vernal pool and seasonal wetlands swale soils and
8 hydrology, and the need for the hard pan layer and
9 uplands around the pool to stay intact and protect
10 the integrity of the pool, any disturbance within
11 250 feet of a pool or complex would result in a
12 significant impact to that pool."

13 So, it seems like CEC is just kind of
14 reiterating the standard that's widely accepted by
15 Fish and Wildlife Service. So, in your opinion,
16 Ms. Davis, if the 24 inch pipeline was trenched
17 through a vernal pool, would you consider this an
18 impact to the pool?

19 MS. DAVIS: Assuming it goes below the
20 hard pan layer, it would destroy the hydrology of
21 the pool, unless the pool was restored on top of
22 it, which I haven't --

23 MS. MOORE: Trenching your way through a
24 pool, I'm not trying to be tricky here --

25 MS. DAVIS: This project quantified all

1 of those as direct impacts.

2 MS. MOORE: You'd consider that a direct
3 impact?

4 MS. DAVIS: Yes.

5 MS. MOORE: Okay. What about if the
6 trench was ten feet away from the pool, would you
7 consider that to be indirectly impacted?

8 MS. DAVIS: I feel like I'm testifying
9 on something I didn't participate in on this
10 project. I didn't quantify impacts for this
11 project. So perhaps this is -- I mean, are you
12 asking in general, or are you, I guess --

13 COMMISSIONER PERNELL: If you don't know
14 the answer --

15 MS. DAVIS: I'm very qualified to answer
16 that question.

17 MS. LUCKHARDT: It's just that Ms.
18 Davis' testimony deals with the preliminary
19 analysis of three or four different routes for the
20 pipeline initially, and she did not then go on and
21 do the final wetland delineation, nor has she
22 answered data responses in this project.

23 She did some foundational studies that
24 support the alternatives analysis, so I think she
25 can answer these questions if you would like her

1 to, I'm just not sure it's going to lead to
2 anything that's really relevant to the
3 determination of this case.

4 HEARING OFFICER SHEAN: All right. It
5 is essentially a generic question. If you can
6 give a generic answer, you can --

7 MS. DAVIS: I apologize for my
8 inexperience in hearings.

9 HEARING OFFICER SHEAN: No, that's okay.

10 MS. DAVIS: So, your question, if I
11 understand it correctly, Diane, is if a hard pan
12 layer is penetrated by a pipeline, will a vernal
13 pool within ten feet of that pipeline be adversely
14 affected, is that correct?

15 MS. MOORE: I'm talking about -- yes.
16 And I assume we're not just trenching this thing
17 three inches under the ground, I assume we're
18 putting it deep enough so the hard pan layer
19 probably would be.

20 So the first question was just about if
21 you went right through the pool would you consider
22 that direct, and you said yes. And now I'm saying
23 if you were ten feet away, what kind of impact to
24 the pool --

25 MS. DAVIS: It depends on the soil type,

1 in that if you have a soil type and the
2 impenetrable layer is a hard pan overlayed by
3 heavy clay, the lateral movement of the surface
4 water over the hard pan is very restricted by the
5 heaviness of the clay, and therefore, no, in many
6 cases that pool will stay intact because the
7 hydrology is resulting from direct precipitation,
8 and not water flowing into that vernal pool.

9 So, that's a situation where it would
10 not be adversely affected. There are situations
11 that don't have -- the soil substrate is such that
12 there is surface movement above a hard pan or a
13 clay pan. And in those situations it's possible,
14 depending on how it flows, water flows downhill,
15 whether it would be affected.

16 MS. MOORE: Okay, so in doing an impact
17 analysis you really need to look at wetland by
18 wetland, how it lays in the land, what the soil
19 types are, how far away is the impact, and things
20 like that, in order -- the agencies generally have
21 this 250 foot standard that we've talked about
22 that CEC staff have reiterated as appropriate, but
23 through site-specific study there could be a basis
24 for saying we don't have to consider everything
25 within this 250 foot corridor?

1 MS. DAVIS: In my opinion, the 250 feet
2 would more than compensate for any indirect
3 impacts from fractured hydrology of a hard pan, in
4 any soil situation.

5 MS. MOORE: So whenever you're 250 feet
6 away, you're clear sailing?

7 MS. DAVIS: And I'm not a soils expert,
8 but I do know a lot about vernal pool.

9 MS. MOORE: And you have seen the Corps
10 of Engineers and the Fish and Wildlife Service
11 deviate from this 250 standard on occasion?

12 MS. DAVIS: Yes. And I also wanted to
13 point out something that CH2M pointed out to me in
14 their analysis of indirect effects.

15 Not only was this project for the
16 pipeline route -- if it was a vernal pool even a
17 portion of it was within 250 feet, but it extended
18 beyond that 250 feet -- the entire acreage of that
19 wetland area was accounted as indirectly affected
20 and was included in their impact analysis and
21 mitigation.

22 MS. MOORE: Uh, Mr. Koford, your
23 testimony indicates that you worked on the
24 biological resources investigation of 21 power
25 plant or transmission line projects. In how many

1 of those projects did the presence of sensitive
2 biological resources or wetlands change the
3 location or ultimate configuration of the power
4 plant? An estimate's fine.

5 MR. KOFORD: I'd say in every project we
6 deviate project features to avoid to the extent
7 possible.

8 MS. MOORE: Are you saying that in the
9 majority of projects there's some moving around to
10 accommodate sensitive resources?

11 MR. KOFORD: Yes, I'd say that's true.

12 MS. MOORE: For any of these projects
13 did the presence of sensitive biological resources
14 or wetlands ever result in the project not getting
15 built?

16 MR. KOFORD: I may have to rephrase your
17 question, but the first step in a good project is
18 to do some triage on alternate sites. And
19 certainly we'd never build a project at some of
20 those bad sites.

21 So the point of an initial alternatives
22 analysis for a project site, for pipelines, is to
23 not build the project on the bad sites. So I
24 would say yes, they do result in the project not
25 getting built.

1 MS. MOORE: So, in layman's terms,
2 you've seen the biology kill a project?

3 MR. KOFORD: No, it kills the location
4 of the project.

5 MS. MOORE: Okay, thank you. Of the 21
6 projects, have you been back to any of them during
7 or after construction?

8 MR. KOFORD: Many.

9 MS. MOORE: Have you critically looked
10 at the success of the mitigation measures that you
11 proposed?

12 MR. KOFORD: On some of them, yes.

13 MS. MOORE: Has the mitigation always
14 been successful?

15 MR. KOFORD: I'm satisfied the
16 mitigation was successful.

17 MS. MOORE: Has there ever been a case
18 where you've gone back and said "man, we should
19 have done this just a little bit differently, it
20 would have been better?"

21 MR. KOFORD: I can always think of
22 improvements.

23 MS. MOORE: Looking at the end of your
24 testimony, you indicate that you work for IEC
25 Corporation, which I actually haven't heard of.

1 Is that correct?

2 MR. KOFORD: That's correct.

3 MS. MOORE: Did you leave CH?

4 MS. LUCKHARDT: I'm asking relevance on
5 that? Where Mr. Koford currently works, I think,
6 is irrelevant to these proceedings.

7 MS. MOORE: I'm kind of trying to
8 establish why somebody that's not with the company
9 any more is --

10 MS. LUCKHARDT: I'm asking whether
11 that's relevant or not, and I don't believe it is.

12 HEARING OFFICER SHEAN: Okay, well let
13 her finish her sentence.

14 MS. MOORE: All of a sudden I've got Dr.
15 Huffman involved in a project that he wasn't in
16 two months ago, E.J. is somewhere else, the Corps
17 is telling me that they don't have the information
18 that they need, I had six days to review this
19 stuff, I'm really thinking that things are in a
20 state of chaos, and I'm just trying to figure out
21 what the heck has gone on, and maybe I'll get it
22 after awhile.

23 HEARING OFFICER SHEAN: All right. The
24 point is, what's the relevance of your last
25 question?

1 MS. MOORE: I'm wondering today -- if
2 you let me ask about three more questions I think
3 we can get through this without -- I'm wondering
4 today who's paying him to be here?

5 HEARING OFFICER SHEAN: Isn't that
6 obvious, it's the Applicant. He's sitting at
7 their table.

8 MS. MOORE: I don't know, Ms. Peasha
9 isn't paying me. I don't mean to be snippity
10 about this --

11 HEARING OFFICER SHEAN: You're not
12 staying with information that's helpful to our
13 making a decision, unless somehow you have
14 information that could get to us like a smoking
15 gun that somehow, by his being paid by the
16 Applicant to come testify he's being untruthful.
17 And there's no basis for that, okay?

18 MS. MOORE: Okay. I'm trying to figure
19 out if he's still paid and working on this
20 project, is this a one-time show that he's --

21 HEARING OFFICER SHEAN: It does not
22 matter to the Commission in terms of making a
23 decision. So don't stick with that line of
24 questioning. We're interested in the substance of
25 the matter, that's not biology. There's not

1 enough --

2 MS. MOORE: Can I ask if IEC Corporation
3 is a subcontractor to CH2M Hill?

4 HEARING OFFICER SHEAN: Not at this
5 point.

6 MS. MOORE: Okay, thank you. I'll ask
7 at the break. Looking at the summary section of
8 your testimony, Mr. Koford, you make the statement
9 that "any potential impacts will be mitigated to a
10 level of insignificance."

11 Given the status of the Corps permit
12 process, with some applications being submitted to
13 them -- I guess it was sometime late last week --
14 and the status of the Biological Opinion -- or the
15 section seven consultation -- given the status of
16 those two processes, do you think it's time to say
17 that any potential impacts will be mitigated to a
18 level of insignificance? Do you feel comfortable
19 making that at this point in the environmental
20 review process?

21 MR. KOFORD: We initiated our
22 discussions with the Corps 18 months ago. The
23 final machinations of the permit represent the
24 culmination of 18 months of discussions and
25 consultations. I'm confident that's a correct

1 statement.

2 MS. MOORE: I understand that Dr.
3 Huffman has been retained to take over the Corps
4 permit process. And on the second page of your
5 testimony, Mr. Koford, you identified that the
6 Corps section 404 permit application was submitted
7 to the Corps on April 23rd.

8 It's not clear if this new application
9 supersedes the old application, or if the old
10 application was withdrawn, or does this supplement
11 it. Can you explain the relationship of the old
12 application to the new one, and what the heck went
13 on with the switch of wetlands consultants?

14 MS. LUCKHARDT: I'm going to object
15 again. I --

16 HEARING OFFICER SHEAN: Okay. I'm going
17 to let him answer the question about any effect of
18 the last filing on formal filings. That's
19 something that we may find relevant. Go ahead.

20 MR. KOFORD: With each iteration of a
21 permit process -- not specific to this one -- we
22 try to get closer to the target. If Justin Cutler
23 says "gee, you're missing this piece of
24 information," rather than just give him that one-
25 liner, we've been giving him a complete new

1 application, which completely supplants the
2 previous.

3 And usually it's because there's one gap
4 somewhere, or some item of deficiency that
5 Justin's given us. We're trying to get closer and
6 closer to his target to complete all the things he
7 needs.

8 MS. MOORE: Okay, so the old application
9 was not withdrawn, but has been superseded?

10 MS. LUCKHARDT: I would ask which
11 application, which date --

12 MS. MOORE: Mr. Shean, where I'm trying
13 to go with this is that the biological, the
14 consultation with the Fish and Wildlife Service
15 was initiated by the Corps based on an application
16 that was submitted to them several months ago.

17 That process, that section seven process
18 is undergoing. I'm unclear if they're going to
19 have to start a new section seven consultation
20 process, we've got a new permit application, I'm
21 not getting where --

22 MS. LUCKHARDT: I would suggest then
23 that she ask whether we have to initiate a new
24 section seven consultation.

25 HEARING OFFICER SHEAN: All right. Just

1 ask the question you have in mind, which is
2 whether or not it has to recommence a new
3 application or permitting process, and that should
4 answer your question.

5 MS. MOORE: Mr. Koford, are you still
6 involved with the processing of the 404 permit?

7 MS. LUCKHARDT: I'm asking what the
8 relevance of that is?

9 MS. MOORE: I need to know who to ask
10 questions to.

11 HEARING OFFICER SHEAN: All right. You
12 either need to ask the question you want to ask,
13 and get the answer, which is does there have to be
14 a new process, or not. Isn't that what you just
15 said is what you're trying to find out? Let's
16 just ask that question straight up.

17 MS. MOORE: Okay, we'll go back, and
18 I'll ask anybody on this panel, because I'm not
19 sure who I'm supposed to be asking here. Is the
20 Corps going to need to initiate a new section
21 seven consultation in light of this superseded or
22 new 404 permit application submitted last week?

23 MR. HUFFMAN: The answer's no.

24 MS. MOORE: So the ongoing consultation
25 will continue, and the permit that will ultimately

1 be issued will be conditioned on that bio-opinion?

2 MR. HUFFMAN: Yes.

3 MS. MOORE: Okay, thank you. Mr.
4 Koford, can you explain why your testimony
5 identifies that the laydown area will be re-
6 vegetated, and Mr. Huffman's testimony states that
7 the area may be restored to its original
8 condition. I'm just not clear of what the
9 ultimate fate of the laydown area is?

10 MR. KOFORD: During the course of this
11 project there has been the intent to restore the
12 laydown area, and there's been a definition by
13 staff that greater than a certain number of years
14 of use constitutes permanent impact.

15 And so there's a grey area with respect
16 to definition whether in eight years or six years
17 or two years represents permanent impact. So, I'm
18 probably incorrect in saying that it will be
19 revegetated. The correct statement is probably
20 may be revegetated.

21 MS. MOORE: Thank you. Dr. Huffman,
22 your resume speaks for itself. You know, you're
23 truly the expert witness, and I'm concerned that a
24 likely reason that you were brought into this
25 project is that the Corps 404 permit process is in

1 a shambles.

2 MS. LUCKHARDT: I'm going to object to
3 this constant characterization of the process as
4 being in chaos and shambles and the various other
5 descriptors.

6 HEARING OFFICER SHEAN: Why he was
7 brought in is irrelevant. If he can aid their
8 process and move it along, which -- all of this
9 involves the use of public resources, at least at
10 the Energy Commission, and if that's the effect,
11 we don't care why.

12 MS. MOORE: I'm hoping he can get it
13 sorted out too.

14 HEARING OFFICER SHEAN: Okay. All
15 right.

16 MS. MOORE: Dr. Huffman, when were you
17 first contracted to work on this job?

18 HEARING OFFICER SHEAN: That's not
19 relevant. You need to get your questions on the
20 substance here, or we're done. We've got -- all
21 right?

22 MS. MOORE: Can I assume that you've had
23 adequate time to thoroughly review all the
24 information and the chronology of recent documents
25 submitted to the Corps?

1 MR. HUFFMAN: You're asking me if I've
2 reviewed the information that's been submitted to
3 the Corps?

4 MS. MOORE: Do you feel that you've had
5 adequate time to review the information, and that
6 you're really up to speed with the permit process
7 on this project?

8 MR. HUFFMAN: I believe so, yes.

9 MS. MOORE: Have you worked on many
10 energy projects?

11 MR. HUFFMAN: Yes.

12 MS. MOORE: I'm sure you're aware that
13 the CEC's AFC process is supposed to be equivalent
14 to a county- or city-directed CEQA-type of review.
15 Do you think that the current level of analysis of
16 project impacts to wetlands and sensitive species,
17 and the stage of maturity of the section 404
18 permit and section seven consultation processes,
19 allows for approval of this project at this time?

20 MR. HUFFMAN: Wow, that's a long one.
21 Can you break that down into smaller questions?
22 Thank you.

23 MS. MOORE: Where I'm trying to get to
24 is, in a CEQA review here -- is it time to approve
25 this project, have we developed the information

1 that we need to that level, and so I'm going to
2 try to break this down.

3 Do you think that the current level of
4 analysis of project impacts to wetlands is far
5 enough along that the project could be approved,
6 that it's been addressed thoroughly enough to meet
7 the requirements of CEQA?

8 MS. LUCKHARDT: I'm wondering if she's
9 asking for a legal opinion, in which case I
10 wouldn't want him to answer --

11 HEARING OFFICER SHEAN: If you can
12 answer the question as a non-lawyer, which you
13 probably are thanking God at the very minute
14 you're not, then go ahead.

15 MR. HUFFMAN: You're a mind reader.

16 MR. HUFFMAN: If you can answer it in a
17 non-legal sense.

18 MR. HUFFMAN: My sense of the question
19 is is that I can't answer it because that's a
20 decision the Energy Commission has to make.

21 MS. MOORE: I appreciate that, thank
22 you.

23 HEARING OFFICER SHEAN: You should be a
24 diplomat, not a lawyer.

25 MR. HUFFMAN: No, I should be home.

1 MS. MOORE: Dr. Huffman, have you ever
2 worked on a project where the presence of wetlands
3 changed the location or ultimate configuration of
4 the project?

5 MR. HUFFMAN: In my 20-plus years
6 experience the answer is yes, every time.

7 MS. MOORE: Okay, that was supposed to
8 be an easy one.

9 MR. HUFFMAN: I appreciate that.

10 MS. MOORE: Have you ever worked on a
11 project where a CEQA review was completed and
12 then, during the section 404 process, the presence
13 of wetlands changed the location or ultimate
14 configuration of the project?

15 MR. HUFFMAN: Yes.

16 MS. MOORE: When I spoke to Mr. Cutler
17 last week he indicated that the impact analysis
18 that CH2M Hill had done was not complete, and he
19 would be looking to you to be providing a
20 comprehensive analysis. He also indicated that --

21 MS. LUCKHARDT: Is she testifying?

22 HEARING OFFICER SHEAN: I don't know.
23 You know, you've asked him a similar question
24 already before, so let's just not go to the same
25 place, if that's what you're doing.

1 MS. MOORE: I'm sorry, I've never done
2 one of these hearings, and God forbid I ever have
3 to come back --

4 HEARING OFFICER SHEAN: I understand
5 that.

6 MS. MOORE: -- through something this
7 painful again. What I'm trying to get at is the
8 quantification of wetland impacts was described as
9 inadequate. Do you believe --

10 MS. LUCKHARDT: Described by who as
11 inadequate?

12 MS. MOORE: By CH2M Hill. What had been
13 submitted by CH2M Hill was inadequate, and
14 apparently what was submitted on April 23rd still
15 needed some completion as far as the impact
16 analysis. At that point in time, before you
17 submitted this stuff --

18 MS. LUCKHARDT: Again, this is just
19 going on and on and on.

20 HEARING OFFICER SHEAN: All right, let
21 me just do it this way. You had previously asked
22 him, and he indicated they were supplementing the
23 information. To some degree it was the
24 information that was on the Exhibit that was
25 admitted this morning, and that's already in the

1 record.

2 Now, is there something about his answer
3 that you thought was insufficient that you want to
4 expand upon?

5 MS. MOORE: Well, yeah --

6 HEARING OFFICER SHEAN: Such as is there
7 more information than that that you expect to
8 supply to the feds?

9 MS. MOORE: Okay, I'm sorry if I'm being
10 frustrating here, I'm not intending to be.

11 HEARING OFFICER SHEAN: Well, it's not
12 frustrating. It's just a question of, you know,
13 we have a finite amount of time, and there's some
14 other people here who want to talk, and we just
15 want to stick on stuff that is pivotal in making a
16 decision as opposed to all the chaff that sort of
17 goes to getting to that nugget. So the quicker we
18 get to the nugget, the better.

19 MS. MOORE: Okay. CH2M did an impact
20 analysis, you have now re-done it. Have you
21 increased the amount of --

22 MS. LUCKHARDT: I object to the
23 characterization of having redone the impact
24 analysis.

25 HEARING OFFICER SHEAN: Just ask him

1 what he's going to do, if anything.

2 MS. MOORE: Has your impact total of
3 wetlands, are they greater or less than those
4 quantified by CH2M previously?

5 MR. HUFFMAN: They're the same, they've
6 just been recast as far as the nature of the
7 location of habitat type, it's been broken down in
8 more of a summary form. What the total wetlands
9 were, and then what the various impacts were by
10 wetland habitat type. But the actual impact
11 numbers have not changed.

12 MS. MOORE: Okay, so it's more of a
13 refinement?

14 MR. HUFFMAN: Yes, well, first I
15 reviewed it all, and reviewed the delineations. I
16 reviewed the Corps letter, I've talked to Mr.
17 Cutler.

18 Mr. Cutler expressed the information
19 needs that he wanted, and I got busy and started
20 providing those to him, but what you call a
21 deficiency is really -- Mr. Cutler is a permit
22 manager, and goodness knows they're all different
23 in what they like to see and what they want, and
24 so what I'm providing him with is information that
25 he feels that he needs is necessary so that he can

1 publish the public notice, that's all.

2 MS. MOORE: Okay. In light of the fact
3 the public notice has not been published, and the
4 Corps has gotten what you believe is basically the
5 final impact quantification just in the last week,
6 do you think that this time is the appropriate
7 time for SMUD and their consultations to claim
8 that any potential impacts will be mitigated to a
9 level of insignificance?

10 MR. HUFFMAN: I think you're asking for
11 my opinion as to whether or not that the
12 mitigation that's being proposed would mitigate
13 for the impacts, if not minimal then a higher
14 standard, and I believe they do.

15 MS. MOORE: Have you read Ms. Crowe's
16 testimony?

17 MR. HUFFMAN: I'm sorry, I did not
18 understand the question?

19 MS. MOORE: Have you read Ms. Crowe's
20 testimony?

21 MR. HUFFMAN: No, I have not.

22 MS. MOORE: She identifies that the
23 laydown area south of the site was chosen due to
24 what she describes as a slightly favorable
25 biological review compared to potential laydown

1 area locations that are adjacent to the site.

2 So she concluded that it's slightly
3 favorable when looking at other areas adjacent to
4 the site. In your 404B1 alternatives analysis,
5 which I'm sorry I haven't read yet, I assume that
6 you've looked at potential laydown areas not only
7 adjacent to the site, but some that are not
8 immediately adjacent to the site?

9 MR. HUFFMAN: Yes. I'm sorry you
10 haven't read my analysis, I'm sure you'll enjoy
11 it. But i did look at a site that was located
12 immediately west of the project site, one that was
13 located south, and one that was located some
14 distance to the east as potential laydown areas.

15 MS. MOORE: Okay. I don't know if I
16 could ever enjoy reading a 404B1 alternatives
17 analysis, I can barely stand writing them. But as
18 an expert I'm sure I look forward to reading
19 yours, I'm sure I could get some good tips.

20 When you prepared this alternatives
21 analysis did you also look at potential areas like
22 using some of the facilities there already at
23 SMUD, some of the parking facilities and some of
24 the offices and for some of the laydown functions?

25 MR. HUFFMAN: Yes.

1 MS. MOORE: Are you aware that this is a
2 two-phase project, and that we're only looking at
3 phase one right now?

4 MR. HUFFMAN: Define what you mean by
5 two phases?

6 MS. MOORE: I understand that the power
7 plant that is being studied and reviewed today
8 that there will be a second phase with an
9 approximately equal-sized second unit built in the
10 future. It will go through a different
11 environmental review.

12 So this is phase one of what I think
13 SMUD hopefully hopes will be an overall larger
14 project than what we're looking at today.

15 MS. LUCKHARDT: I don't know if that's
16 quite an accurate characterization of it. The
17 thousand megawatt project is being analyzed in all
18 subject areas where it can, and I believe the 500
19 megawatt size constraints are -- and maybe staff
20 can help me -- are air quality transmission and
21 water, and then anything that has changed from the
22 original certification to the proposal for the
23 second half.

24 HEARING OFFICER SHEAN: In asking your
25 question do you understand that? That the areas

1 that are not covered for the second 500 megawatts
2 are transmission system engineering, air quality,
3 and water resources?

4 MS. HOLMES: I -- staff's FSA does not
5 include mitigating for biological resources
6 impacts. It includes a general discussion of the
7 types of impacts we might expect, but because, as
8 people are aware, you need to do specific surveys
9 immediately prior to filing the application.
10 Sometimes during the application process.

11 We don't have a precise quantification
12 of the mitigation of the specific impacts that
13 would occur for biological resources with phase
14 two, or the mitigation that would be required.
15 It's just sort of a qualitative discussion.

16 HEARING OFFICER SHEAN: I think that
17 goes to the compressor stations most
18 predominately.

19 MS. HOLMES: Not to the project site,
20 the laydown area, and --

21 HEARING OFFICER SHEAN: Correct, the
22 second laydown area.

23 MS. MOORE: Are we studying phase two
24 here today, or are we just talking about phase
25 one? Maybe I'm not clear.

1 HEARING OFFICER SHEAN: All right, I'm
2 going to repeat this.

3 MS. MOORE: Thank you.

4 HEARING OFFICER SHEAN: This
5 comprehensive CEQA-equivalent process is covering
6 phase one and two, except for the following for
7 phase two: air quality, transmission system
8 engineering -- which really isn't a CEQA item, but
9 we throw it in there, the stuff on biology for the
10 added impacts of compressor station and another
11 laydown area, and -- have I left out something?

12 MS. HOLMES: And water resources.

13 HEARING OFFICER SHEAN: And water
14 resources for the second phase.

15 MS. MOORE: So, will there be another
16 AFC process for phase two, or not?

17 HEARING OFFICER SHEAN: There would be a
18 subsequent filing for phase two that would address
19 all these matters, and anything else that may have
20 changed, if it did change, in any matter we've
21 reviewed so far.

22 MS. MOORE: Okay. Dr. Huffman, I hope
23 you're getting equally educated in this as I am.
24 But when the Commission makes a decision following
25 these hearings, that will be to approve phase one,

1 or is to also approve phase two?

2 HEARING OFFICER SHEAN: Are you asking
3 me?

4 MS. MOORE: Yeah, I'm just trying --

5 HEARING OFFICER SHEAN: It's just as I
6 described. It approves everything except what I
7 said was excepted. So it is not a "piecemeal"
8 under CEQA and the laws and court decisions
9 governing CEQA, it is comprehensive but for the
10 fact that they have to return on these other items
11 plus anything that would have changed in the
12 interim.

13 MS. MOORE: Okay. I'm really sorry that
14 I'm so unfamiliar with this system. Its quite
15 confusing.

16 HEARING OFFICER SHEAN: Okay. We are
17 into our lunch period, so we're going to take a
18 break. We will --

19 COMMISSIONER PERNELL: Wait a minute.
20 How much more do you have?

21 MS. MOORE: Not a whole heck of a lot.
22 I mean, I'm hungry, but --

23 HEARING OFFICER SHEAN: That means how
24 much, do you think?

25 MS. MOORE: Probably about an hour.

1 HEARING OFFICER SHEAN: Okay, now is
2 there anyone who is here from the public, and
3 cannot return after lunch, and that person wishes
4 to make public comment? All right, seeing no
5 hands, let me indicate that we are just about a
6 quarter past noon, we are going to return at 1:00.
7 And when we return we're going to deal with the
8 people from the fire department when we resume.

9 MS. HOLMES: Before we break, I'm
10 concerned about potentially losing the
11 representatives from U.S. Fish and Wildlife
12 Service and California Fish and Game. I think,
13 given the discussion we've had this morning, it
14 would be very helpful to have them available to
15 talk to the committee, perhaps after the panel
16 with the representatives from the fire department
17 go on?

18 HEARING OFFICER SHEAN: Okay. All
19 right, we're going to take a break then, we'll be
20 back at 1:00.
21 (Off the record.)

22 COMMISSIONER PERNELL: Back on the
23 record. Mr. Shean?

24 HEARING OFFICER SHEAN: All right. It's
25 1:00, and in accordance with a request by Mr.

1 Cohn, the item coming under hazardous materials
2 and worker safety, which involves having
3 representatives from the local fire and public
4 safety agencies come and explain and educate us on
5 a couple of things.

6 And first of all, let me thank you very
7 much for coming. In a minute we're going to swear
8 you in, but rather than subject you to the trauma
9 of that initially let me tell you why we've asked
10 you to come here.

11 As a result of the last hearings that we
12 had, which were basically a month ago, or they
13 were longer ago than that-- two months ago -- the
14 committee, Commissioner's and Commissioner
15 advisors had some questions about what, in terms
16 of fire response, was the expectation both of SMUD
17 and the local community.

18 And we have to some degree obviously a
19 significant function in assuring public health and
20 safety, in assuring it to the extent possible,
21 both to the workers at the site as well as the
22 public were going to be adequately protected in
23 the event of an incident at the new power plant.

24 So, among the things we were trying to
25 determine is there a clear assessment, not only by

1 SMUD but by the local agencies of what the
2 potential for fires there are out there, and then
3 what is the level of preparedness and the adequacy
4 of equipment to fight such fires at any of the
5 graduated levels, if you will, of response that
6 may become necessary.

7 So that's basically what we're trying to
8 find out. So we're confident that not only will
9 the plant be protected and the public be protected
10 but that none of the firefighters and others who
11 would respond to a call, well let me say, to
12 ensure that all of them are adequately trained and
13 would not face any undue danger by coming to the
14 plant to fight a fire or respond to some other
15 incident there.

16 So, if I may, I'll ask our Court
17 Reporter to administer an oath if you're going to
18 testify, and have you stand and he'll administer
19 the oath.

20 Whereupon,

21 MESSRS. ROTHSCHILD, HENDRICKSON, TEMPLETON, HOLMES

22 AND ATWOOD

23 were called as witnesses and herein, after being

24 duly sworn, were examined and testified as

25 follows:

1 HEARING OFFICER SHEAN: And with that,
2 and for his convenience, let me ask that you
3 identify yourself and spell your last name, and
4 give the agency that you represent, please.

5 MS. ROTHSCHILD: Elise Rothschild, R-o-
6 t-h-s-c-h-i-l-d, Sacramento County Environmental
7 Management Department.

8 MR. HENDRICKSON: I'm Glenn Hendrickson
9 with the Herald Fire Department. It's H-e-n-d-r-
10 i-c-k-s-o-n.

11 MR. TEMPLETON: I'm James Templeton,
12 with Galt Fire District. T-e-m-p-l-e-t-o-n.

13 MR. HOLMES: My name is Richard Holmes,
14 H-o-l-m-e-s, I'm with the Elk Grove Community
15 Services District Fire Department.

16 MR. ATWOOD: My name is Charlton Atwood,
17 A-t-w-o-o-d. I represent City of Sacramento Fire
18 Department.

19 MR. COHN: All right. Mr. Shean, what I
20 thought I might do is just ask a few preliminary
21 questions to lay a foundation, then turn the panel
22 over. We brought a panel because the duties to
23 respond to emergencies -- whether it's fire or
24 hazards material incident -- in Sacramento county
25 is integrated.

1 And it's not the responsibility of any
2 one department. So we wanted to be sure that that
3 foundation were laid, and then we'll turn that
4 over to you. So let me, since we have not
5 submitted resumes for these witnesses, just ask a
6 few preliminary questions, if it please the
7 committee, to establish their credentials.

8 HEARING OFFICER SHEAN: You know, I
9 don't think we need any further information about
10 their qualifications.

11 COMMISSIONER PERNELL: No, they've been
12 qualified.

13 MR. COHN: Okay, great. What I will do,
14 then, is ask the Elk Grove CSD Fire Department
15 Battalion Chief Richard Holmes to describe
16 generally how the fire dispatch and response
17 system works in Sacramento County. Battalion
18 Chief Holmes?

19 MR. HOLMES: Good afternoon, commission.
20 Again, Richard Holmes, Elk Grove Fire Department.
21 I want to give you a brief overview of the fire
22 and rescue system within Sacramento County.

23 As you'll notice on the map behind you,
24 there are 11 fire agencies within the county of
25 Sacramento. And I use the term fire agency

1 because some of them are departments of cities,
2 such as Sacramento city, Folsom, etc. Other
3 agencies are special districts. We have fire
4 protection districts, in Elk Grove's case we have
5 community services districts.

6 But in all we have 11 agencies. These
7 agencies range from large urban agencies,
8 obviously, to small, rural volunteer agencies.
9 But the services we provide are integrated and
10 seamless, and I'll give you a little further
11 information as to how that system works.

12 These agencies obviously provide fire
13 protection service throughout the county of
14 Sacramento. We also provide, with a small
15 exception, ambulance services to the entire
16 county. Swift water rescue, technical rescue,
17 confined space rescue, and hazardous materials
18 response.

19 These services are provided under a
20 common dispatch center, with two exceptions. Down
21 in the remote delta regions of Sacramento County
22 lies the Delta Fire Protection district and
23 Isleton. Those two agencies are dispatched out of
24 Solano county, due to geography and the cost-
25 benefit analysis of providing dispatch services

1 from Solano county.

2 But all of the remaining agencies are
3 dispatched under a single dispatch center located
4 in Rancho Cordova. This dispatch center -- we're
5 very proud of this center -- it is a fully
6 enhanced 911 computerized dispatch center. We
7 operate off of a 800 megahertz radio system, and
8 we have taken the county of Sacramento and broken
9 it up into literally hundreds if not perhaps
10 thousands of run zones.

11 A quick example of what a run zone is.
12 In the area of Elk Grove, for example, we have
13 several hundred run zones, and what that does for
14 the dispatch center is, when someone picks up the
15 telephone from their home and dials 911 to report
16 an emergency, the dispatch center automatically
17 knows their address and their callback
18 information, and a run zone is identified.

19 And the run zone, then, is entered into
20 a computer, and that computer pulls up the 50
21 closest fire stations to that address, to where
22 that emergency is being reported.

23 Now, obviously, most emergencies we
24 respond to require the response of a single fire
25 station or perhaps two. On large fires we may

1 only see four or five fire stations dispatched.

2 But yet, we have a run zone that goes
3 fifty stations deep. And the reason we have that
4 is so that if those fire stations that are closest
5 to that home or place of business that are having
6 an emergency are committed to another emergency
7 and not staffed at the time, the computer knows
8 the next closest.

9 And very rarely do we get down that deep
10 that we're looking for that fiftieth closest fire
11 station to a given emergency, but we go that far
12 just to have depth in the system.

13 So the computerized program enables us
14 to ensure that that citizen is going to get the
15 closest resources possible, whether they need one
16 fire engine or twenty, the computer can do that
17 for us.

18 The system is built on a boundary-less
19 system, and therefore does not recognized
20 political boundaries. so if someone lives on the
21 border of, let's say, the city of Sacramento and
22 Elk Grove, the computer doesn't automatically send
23 that call to the city's fire station because they
24 technically live in the city. If an Elk Grove
25 fire station is closer, that will go to an Elk

1 Grove station, or vice versa.

2 And that is a real benefit to the
3 general public, to know that they're getting the
4 closest resources regardless of political entity.

5 The map behind you does not reflect the
6 districts' or the agencies' boundaries, but it
7 reflects what we call the minimum coverage, and as
8 you'll notice, the county is broken into four
9 geographical areas in which we have designed a
10 system to ensure what we call minimum coverage.

11 Now we know that, under significant
12 events -- which can happen anytime of the year,
13 but generally speaking in the summer with our
14 large wildland fire impacts -- we can strip a lot
15 of resources to combat those wildland fires.

16 And we've designed this map system to
17 ensure that no area in the county get's drawn down
18 less than fifty percent of its resources. So, for
19 example, if Elk Grove were to experience a
20 significant event or a lot of events occurring
21 simultaneously, and were starting to reduce the
22 number of stations, we don't create big black
23 holes in the system, and we start to backfill into
24 those areas.

25 And if you get an opportunity a little

1 later you can look at the individual fire
2 stations. You'll notice that a square station --
3 a fire station indicated with a square -- is a
4 minimum covered station, and that station will
5 always be covered. If we have a busy day, or
6 again a significant event, a senior officer will
7 be dispatched to the communications center to help
8 the staff deal with the global picture in the
9 county.

10 The dispatchers are obviously very busy
11 handling the calls, and this senior officer can
12 step in, take a broad look at the entire county,
13 and make sure that we've spread our resources
14 geographically to provide the best service we can
15 to the overall county.

16 If things were to continue to degrade,
17 the fire has perhaps become larger or more events,
18 we can obviously tap into the state of California.
19 And I'm proud to say the state of California has
20 probably the best mutual aid system in the
21 country.

22 The Office of Emergency Services can
23 coordinate the movement of fire and emergency
24 resources throughout the state. We do it all the
25 time, and we're getting very efficient at it. So

1 if we were to have a really bad day, so to speak,
2 the Office of Emergency Services could move in
3 resources into the county very quickly.

4 For example, out of San Joaquin or Yolo,
5 even our neighbors to the east, El Dorado county.
6 So we don't just look at it as a county in and of
7 itself, we help our neighbors outside of
8 Sacramento county, and they help us. And we have
9 an automated, very integrated system to make that
10 happen.

11 And what I'd like to do now is to ask
12 the commission if you have any questions regarding
13 the global picture of fire and emergency services
14 in the county, and I'll defer any special
15 questions you have regarding hazardous materials
16 response to my fellow members.

17 MR. COHN: Would you like a brief
18 introduction about the additional protection on
19 hazardous materials response? Captain Atwood
20 could provide a brief description of what
21 additional measures are available to respond to
22 hazardous materials incidences.

23 HEARING OFFICER SHEAN: We do, but let
24 me just state that, as a citizen of the county,
25 I'm much more at ease and much more confident --

1 just as an average citizen -- than I would have
2 been, having a better understanding of our county
3 system.

4 So I'm very grateful that you're here, I
5 wish that instead of just the couple of dozen of
6 us that are here getting this that it was a wider
7 audience, because I think we'd all have a greater
8 appreciation of how prepared we are, and feel a
9 little bit more secure about the readiness of our
10 government to help its citizens. So, thank you.
11 Why don't you go on?

12 MR. COHN: All right, then. Captain
13 Atwood, if you could and with assistance as needed
14 from Ms. Rothschild, explain a little bit about
15 hazardous materials incidents and response in
16 particular?

17 MR. ATWOOD: My name again Chuck Atwood,
18 A-t-w-o-o-d. I'm fire captain with the City of
19 Sacramento Fire Department.

20 My current position is the hazardous
21 material coordinator, and the city of Sacramento
22 contracts with Sacramento county to provide
23 emergency hazardous materials response. Those
24 responses will include accidents, releases,
25 spills, illegal dumpings, etc.

1 Whenever the first responder fire
2 companies request aid, we're there available for
3 them 24 hours a day. The city of Sacramento Fire
4 Department runs three hazardous materials team.
5 Each team is staffed with four hazardous materials
6 specialists. Then work in conjunction as a fire
7 truck company.

8 They have specialized equipment
9 specifically for emergency responses. That
10 equipment is very detailed. In addition to those
11 hazmat teams, we run a decontamination team, so it
12 provides a total of four teams.

13 We have approximately 108 hazardous
14 materials specialists in the department. Not each
15 specialist will be assigned to a hazmat team on
16 any given day, so we can also pull in those
17 resources.

18 Each member of the city fire department
19 is trained to first-responder operational level,
20 and has even more detailed decontamination
21 capabilities, where they can be pulled in and used
22 as a hazmat resource also.

23 MR. COHN: So, the panel's available for
24 questions from the Committee.

25 MR. GARCIA: I actually want to start by

1 asking the client and project personnel some
2 questions regarding --

3 MR. COHN: Yes, I should mention we also
4 have brought back Mr. Kevin Hudson, who is project
5 manager, and we have available whoever you want,
6 basically. We have Colin Taylor, project
7 director.

8 And if you have questions historically
9 about Rancho Seco and the past operations there,
10 we also have Mr. Steve Redeker, the Rancho Seco
11 plant manager.

12 MR. GARCIA: Thank you. The first
13 question actually does deal with the ranch. Could
14 Mr. Redeker just give us a brief description of
15 what the non-nuclear emergency response
16 organizations are like at the facility prior to
17 shutdown?

18 MR. REDEKER: Prior to shutdown the
19 nuclear and non-nuclear was basically integrated
20 into a single organizational structure. We had an
21 on-call 24 hour a day staff, and additionally a
22 shift operating staff that was trained to deal
23 with the nuclear as well as the non-nuclear issues
24 that might arise.

25 And an organizational structure that

1 could deal with whatever type of issue came up.

2 And they were trained relative to the specific

3 hazards -- the particular chemicals, the types of

4 fires, the fire protection equipment that was

5 available on the site.

6 They were trained in the operation and

7 functioning of the site and fire protection

8 systems and hazardous materials control systems to

9 make sure that they would be placed in operation

10 and used properly if they needed to be used.

11 MR. GARCIA: Were they organized -- at

12 least for firefighting purposes -- were they

13 organized as a fire brigade?

14 MR. REDEKER: Yes. We had a site fire

15 brigade that was made up of members of the

16 operations department and several other

17 departments that were onsite 24 hours, and at

18 least one other department that was onsite 24

19 hours a day. So it wasn't a dedicated fire

20 department, but it was a fire brigade, where

21 firefighting was a secondary assignment.

22 MR. GARCIA: Okay. And I presume they

23 were subject to all the required training and so

24 on?

25 MR. REDEKER: Yes, there was an

1 extensive fire training program for them.

2 MR. GARCIA: Does that organization
3 continue to exist?

4 MR. REDEKER: No, it does not. We have
5 significantly reduced the fire hazards at Rancho
6 Seco, and we now rely on local fire response. We
7 don't have a fire brigade per se at Rancho Seco
8 now.

9 MR. GARCIA: Okay. Well, that's all the
10 questions I had about the ranch, but I do want to
11 ask about the project. And what's the -- let's
12 forget hazardous material for a minute. Let's
13 talk about response to an incipient fire at the
14 new project. How would the plant organization
15 respond to that or deal with that?

16 MR. HUDSON: The way that we envision
17 the operations to take place at Cosumnes Power
18 Plant is where there would be a minimum of two
19 operators 24 hours a day. And two operators would
20 not make up a fire brigade.

21 However, they would undergo training for
22 the 40-hour HazWopr (sp) training, and one of
23 those operators would undergo the eight-hour
24 incident commander training as well. So they
25 would be able to assess any type of fire

1 situation, either from the control panel or from
2 their training.

3 If it was a small fire that would not
4 cause them harm, they could probably put it out by
5 the use of a fire extinguisher that would be
6 located throughout the plant. But upon alarm of
7 the fire the local fire department would be
8 contacted through the county dispatch center as
9 you have heard, and the appropriate response would
10 be made.

11 MR. GARCIA: Just to make sure that I
12 did hear you right, you did say that of these two
13 operator types one would be receiving the 40-hour
14 training?

15 MR. HUDSON: That is correct.

16 MR. GARCIA: Can you tell the committee
17 what combustible materials of any amount are going
18 to be stored and/or used at the facility?

19 MR. HUDSON: The greatest amount of
20 combustible material would be lubricating oil for
21 lubricating the bearings. There would also be oil
22 in the electrical transformers.

23 The quantities of those items are to be
24 found in the AFC, I don't have the amounts on the
25 top of my head. Those would be the major

1 combustibles.

2 MR. GARCIA: Do you have a rough idea of
3 how much?

4 MR. HUDSON: I would have to check on
5 that to be sure, I wouldn't want to misinform the
6 committee.

7 MR. COHN: We can check and come back,
8 if that's --

9 MR. GARCIA: Yes, I think it's important
10 to get that on the record.

11 MR. TAYLOR: This is Colin Taylor. Can
12 I just add that these materials are covered by a
13 fixed fire protection system, so the turbine lubor
14 system will be covered, and so will the
15 transformers. So there's quite an extensive
16 amount of fixed fire protection on this project.

17 MR. GARCIA: I understand that, but the
18 purpose of this fire response equipment is that,
19 given that the incident could have happened, and
20 so the incident has happened.

21 There was a recent substation fire that
22 Edison was involved in, Vincent substation, and it
23 just literally devastated the substation.

24 MR. HUDSON: I have an answer for your
25 quantities of the flammable, combustible

1 materials. In the AFC, in table 8.12-3, that's
2 page number 8.12-2, we have mineral insulating
3 oil, a quantity of 274,000 gallons. It's a
4 combustible material.

5 And lubrication oil, the amount is
6 65,000 gallons, and that's classified as a
7 flammable material. And these quantities are for
8 a 1,000 megawatt facility at full buildup.

9 MR. GARCIA: And then, in addition to
10 that you have the natural gas which is, by itself,
11 flammable as well, is that correct?

12 MR. HUDSON: That is correct. Natural
13 gas would not be stored onsite, it would be
14 conveyed by underground pipeline to the site, so
15 there'd be no storage above ground for the natural
16 gas.

17 MR. GARCIA: Okay. That's all I have
18 for the plant folks, and I want to direct the next
19 few questions to the fire professional panel. I'm
20 not quite sure who'd be the one responding, but
21 the one that has the best answer, raise your hand
22 or answer.

23 Does the amounts of flammable material
24 that the project manager indicated, were you aware
25 of these amounts?

1 HEARING OFFICER SHEAN: Well, let me
2 just ask, since we had the discussion about
3 dispatch, would it be likely that the first order
4 of dispatch resulting from a call from the
5 facility would be to the Herald Fire Department?
6 Do you think that would be the case?

7 MS. HOLMES: Yes, that would be correct.

8 HEARING OFFICER SHEAN: Maybe we should
9 direct Mr. Garcia's question then to the Herald
10 Fire Department initially.

11 MR. GARCIA: Okay. So would it surprise
12 you to know that there was like 275,000 gallons of
13 transformer oil and 60,000 gallons of lube oil on
14 site?

15 MR. HENDRICKSON: No, we knew there'd be
16 a large amount of it there. They had large
17 amounts when they run Rancho Seco too.

18 MR. GARCIA: Okay.

19 MS. ROTHCHILD: Let me interject here
20 real quick. I'm with the Sacramento County
21 Environmental Management Department, and we're the
22 regulatory agency for overseeing the storage, use,
23 and handling of hazardous materials and hazardous
24 waste throughout the county.

25 Basically by that, then, each facility

1 that has quantities in excess of 55 gallons of a
2 liquid, 500 pounds of a solid, or 200 feet of
3 compressed gas are required to fill out a business
4 plan -- which is basically an inventory form, site
5 map, and emergency response plan.

6 And that information comes into our
7 department, and is then disseminated out to the
8 fire department for that information. So,
9 basically, once everything is complete out there,
10 then the information would go to our office and
11 then transfer to the fire department and the first
12 responders.

13 So there would be knowledge of what
14 chemicals are stored there, the quantities, and
15 also their locations.

16 MR. GARCIA: Okay. My question goes not
17 so much to the amount but to the risk that's
18 associated with that. Can you tell me the nature
19 of the discussions you might have had with SMUD or
20 the project people responding to an incident at
21 the new project, the Cosumnes project?

22 MR. HENDRICKSON: Me? None. We've met
23 with them but we haven't discussed anything yet.
24 Nothing's been worked out.

25 MR. GARCIA: Mr. Taylor, is that

1 something you guys plan on doing?

2 MR. TAYLOR: We've had several meetings
3 with the Herald Fire District in which we've
4 talked about the hazards and the materials. We've
5 asked if they felt that they had the appropriate
6 equipment to respond. And we've asked for any
7 equipment list or anything like that in writing
8 to, you know, to add to their inventory.

9 To this date, we haven't received any
10 written request and no verbal request has been
11 communicated. But we are going to work with them
12 for training, to make sure that they are involved
13 in any training that takes place out there, and
14 make sure that we have the most appropriate risk
15 management plan in place, prior to construction
16 and prior to operations of this plant.

17 MR. GARCIA: All right. I may come back
18 to that. But back to the Herald Fire Chief or one
19 of your other fire professionals there on the
20 panel. In an industrial, electrical fire, having
21 voltages and amperages as you would expect to have
22 in a power plant, what are some of the particular
23 cautions you have to take before you go in there
24 with hoses?

25 MR. HENDRICKSON: We worked with the

1 fire brigade workers at Rancho Seco. At Rancho
2 Seco we worked with the fire brigade leader, and
3 he was aware what everything was, and then we
4 stayed away from the danger areas.

5 MR. GARCIA: Okay. But there's not
6 going to be a fire brigade.

7 MR. HENDRICKSON: Yeah, that's got to be
8 worked out. Somebody up there has got to give
9 directions when we get there.

10 MR. GARCIA: Okay. Do any of the other
11 guys want to add anything to that, with regard to
12 responding to industrial fire like this?

13 MR. TEMPLETON: Hi, James Templeton from
14 Galt Fire. One of the things that we had
15 discussed very briefly was the need for perhaps
16 some specialized equipment in terms of foam
17 firefighting capabilities, because communication
18 is also an issue out at the plant that we also are
19 having discussion with SMUD on.

20 Because when we do respond to that
21 location we have some difficulties in
22 communicating with our own rigs, just because of
23 the terrain and the location. It is true that
24 when Rancho Seco was an active plant they had a
25 fire brigade, they had a fire brigade leader, and

1 they would basically direct where the incident
2 was, and the location, and the easiest way to
3 approach that, because that was their task.

4 So with an industrial-type thing we're
5 concerned with the electrical hazards as well as
6 the fire hazards as well as the pollution hazards
7 and these things that we're dealing with, and
8 those are the things that we'll address through
9 the hazardous materials response plan, and also
10 through the other documentation that SMUD is
11 working on in terms of how to contain spills of
12 flammable and combustible liquids, how to keep
13 them separated, as well as their redundancy in
14 power supplies and water supplies for their onsite
15 fire suppression equipment.

16 Because that, obviously because of the
17 remote location, that is going to be a vital part
18 of the operation, to make sure that there is
19 something happening initially, before the fire
20 really gets large, before the incident really gets
21 large.

22 MS. ROTHSCILD: In addition, in regards
23 to the response out there, whether it's fire or
24 hazmat incident, Herald Fire obviously is the
25 first responding agency, and they will stabilize

1 the scene.

2 In regards to a hazardous materials
3 incident it then will be elevated to what we call
4 a level two hazardous materials incident where
5 Sacramento City Fire as well as my department is
6 notified and responding. And in that case then
7 they have got the specialized training to deal
8 with these types of situations.

9 MR. GARCIA: Okay. Would it be an
10 accurate statement to say that the combined fire
11 agencies will be meeting with project personnel to
12 familiarize themselves with the hazards and
13 develop joint plans for emergency response?

14 MR. TAYLOR: Yes, that's correct. In
15 fact, as we get further along with the
16 construction, we will meet with all the fire
17 people and hazardous response teams and actually
18 go through what we've got on the site, and how
19 they could respond.

20 For example de-energizing the plant
21 before anybody put water on a particular area.
22 And our operations staff would be trained to do
23 that as well. But we would in fact get a permit
24 from the fire chief before we actually operated
25 the plant itself.

1 MR. GARCIA: Okay. I have another
2 "would it be safe to ask" question. Would it be
3 safe to say that the combined fire folks here will
4 get together and develop a list of additional
5 equipment that they might need to respond to such
6 an industrial fire, as well as any training and/or
7 personnel requirements?

8 MR. TAYLOR: Yes, certainly. We'll work
9 with the --

10 MR. GARCIA: Actually, that was for the
11 fire folks.

12 MR. TAYLOR: Oh, I'm sorry.

13 MR. ATWOOD: Captain Atwood, city of
14 Sacramento. The answer to that question would be
15 yes. And I'd also like to add that we've got
16 previous experience with SMUD operating their
17 plants in the city of Sacramento, and prior to
18 their operation we have reviewed everything and
19 worked a lot with them, and during the process of
20 construction and operation we do a continuing
21 training based in familiarization of the operation
22 of the plant.

23 Now, with the people that will be on
24 scene at the plant, you know, they're going to be
25 experienced and knowledgeable about plant

1 operations. The first responder is going to come
2 in, like Ms. Rothschild mentioned, they're going
3 to isolate and think safety. They're going to
4 think public safety number one.

5 And if they have to go into the rescue
6 operations of that nature that's going to be their
7 main focus. Anything additional to that, if it is
8 a hazardous material situation where they don't
9 have the resources to handle it, that's where
10 we're going to come in with our teams and do that.

11 So, the answer to your question is yes,
12 there's going to be a lot of training, a lot of
13 resource identification and capabilities that are
14 going to be addressed.

15 MR. GARCIA: Okay.

16 HEARING OFFICER SHEAN: Can I follow up
17 on your statement here because I think we're both
18 familiar, say, with the Campbell Soup project and
19 the Proctor & Gamble project, and if you were
20 referring to those.

21 Because those are located in a more
22 urban environment, and this is a rural environment
23 for this project, are there any differences in
24 those two situations that should give us or anyone
25 some concern about responding to a fire incident

1 or a hazmat incident. Essentially, the rural
2 versus more urban context?

3 MR. GARCIA: I have one last question
4 for the project. Would the project/SMUD have any
5 serious objections to the -- in the PMPD for the
6 committee -- to include a condition that would
7 require SMUD to mitigate the incremental equipment
8 training and other associated costs for providing
9 the required level of response to the project?

10 MR. SHETLER: My name is Jim Shetler,
11 I'm the assistant general manager for energy
12 supply with the district. In response to your
13 question, we certainly will negotiate and work
14 with the different districts and we will
15 compensate them appropriately if there's
16 additional equipment or training that they feel is
17 necessary that we jointly agree on.

18 And if the condition is worded in that
19 way, we obviously would accept it.

20 MR. GARCIA: All right. That's all the
21 questions I have, Mr. Shean.

22 COMMISSIONER PERNELL: I have a couple
23 of issues. I'm Commissioner Pernell, and first of
24 all I want to thank you for being here, and I do
25 feel a little safer. Although I don't live out

1 here, but -- I do live in Elk Grove, so I'm glad
2 to see a representative from Elk Grove.

3 I think Al has kind of touched on what
4 the committee's concern was. I just have a couple
5 of followup questions. What I didn't hear was
6 response time as support for the Herald Fire
7 Department.

8 So, can anyone, maybe the next closest
9 department -- what would be the response time if
10 you had the first responders there who needed
11 help, what would be the next response time?

12 MR. TEMPLETON: Typically, when we have
13 a larger incident, Galt Fire would be the second
14 in under normal circumstances. We would be
15 backing up Herald Fire.

16 Typically, if it's a larger incident,
17 one of our ALS ambulances would respond
18 immediately, which means that they would be
19 arriving maybe 2-3, maybe four minutes behind
20 Herald Fire's units.

21 And if we were notified that it is a
22 large incident, that there was something pretty
23 major going on, it is very likely that the
24 dispatch center would also respond with additional
25 units automatically, perhaps even a initial

1 dispatch, which is why we have the unified
2 dispatch.

3 They would say, well, how many units are
4 available, and it would be picking units from the
5 surrounding areas, which would be ours, Elk Grove,
6 and working to the north.

7 COMMISSIONER PERNELL: It sounds like
8 that's approximately 2-5 minutes?

9 MR. TEMPLETON: That would be our first
10 arriving unit behind the Herald units, assuming we
11 were dispatched at approximately the same time.
12 If the Herald units were onscene and we responded
13 from our closest station, then our response time
14 would be increased by probably about seven
15 minutes.

16 COMMISSIONER PERNELL: And on the
17 hazmat, Ms. Rothschild is it? What would be the
18 response time for your department getting out,
19 once you're notified that there is hazardous
20 material which -- I'm assuming they would have a
21 hazmat plan and you would know the type of
22 material.

23 So this is hypothetical, but if there
24 was an incident, would you dispatch a team
25 directly, or wait for a call, or how would that

1 work?

2 MS. ROTHSCHILD: Let me review with you
3 real quick how, basically, a hazardous materials
4 incident gets dispatched. First there is the
5 normal fire dispatch, so the first in fire
6 company, basically Herald Fire, would respond.

7 At that time they would determine that
8 there were hazardous materials involved, or
9 potentially involved, in which case then they
10 would get back with our dispatch and ask it to be
11 elevated to this level two hazmat.

12 When things are elevated to a level two
13 hazmat, what it means is that Chuck's group,
14 Sacramento City Fire, gets dispatched along with
15 my department. They respond -- like Chuck was
16 saying -- they've got three different locations
17 where they have their hazardous materials team.

18 Their closest one is down in the south
19 area of Sacramento, and their time down here, code
20 three, would be --how long would it be?

21 MR. ATWOOD: Approximately 20, 25
22 minutes.

23 MS. ROTHSCHILD: So that would --

24 COMMISSIONER PERNELL: I could get here
25 faster than that. I got here this morning in 20

1 minutes.

2 MS. ROTHSCILD: But they're coming from
3 south Sacramento. And they also have a little
4 bigger vehicle, probably, than what you were
5 driving to get down here.

6 COMMISSIONER PERNELL: Well, that might
7 be true.

8 MR. ATWOOD: That's to the site
9 location. To here it would be faster.

10 MS. ROTHSCILD: And basically what they
11 bring then is, they do the suit work. Meaning
12 that they have the chemical protective suits, and
13 the knowledge and equipment to actually enter
14 contaminated zones, or hot zones, to either
15 mitigate the problem or repair the situation, that
16 type of thing.

17 Then my group responds as well, and we
18 -- depending on the time of day -- are coming from
19 various parts of the county, so it could be
20 anywhere from 20 minutes to an hour our response
21 time. And then we act as technical reference to
22 them, along with public health, and environmental
23 safety, and those kind of things.

24 COMMISSIONER PERNELL: Okay. Let me just
25 say that, from the committee's standpoint, I think

1 it's critical to have some special equipment
2 onsite, to give the fire departments and hazmat
3 teams some time to get there. So, I mean, that's
4 going to be a critical issue in terms of safety,
5 is to have some equipment onsite. Is there
6 anything else?

7 MR. ATWOOD: That last mention about the
8 equipment -- we have been in discussion with SMUD
9 concerning neutralizers, absorbents, etc. that
10 will be placed onsite, readily available for the
11 first responder. Because of the quantities that
12 will be onsite, we can't realistically carry it on
13 our rigs to the site, so it will be available on
14 scene.

15 COMMISSIONER PERNELL: Great. Thank
16 you. Anything else? All right, I think we're
17 done with the panel. Again, I appreciate everyone
18 coming out --

19 MR. ROSKEY: Excuse me, could we have
20 some questions, too?

21 COMMISSIONER PERNELL: Okay. Let's do
22 this then. Staff, you have any questions?

23 MS. HOLMES: No, we don't.

24 COMMISSIONER PERNELL: Intervenors? Ms.
25 Peasha?

1 MS. PEASHA: Yes, I just have a couple,
2 and hats off to all of you. I have the utmost
3 respect for you firefighters and volunteers. I,
4 myself, in 1978 or '79, took the Sacramento County
5 Firefighters written and physical test and passed
6 the written test. So I definitely have the utmost
7 respect for you.

8 I am an Intervenor, and my number one
9 concern today, and has been from day one, is the
10 safety out there and the safety in our
11 neighborhoods. And I am concerned with the fact
12 that the response time is going to be awhile, you
13 know, if anything were to happen. And the fact
14 that we are going to have some hazardous materials
15 transported to --

16 COMMISSIONER PERNELL: Okay, Ms. Peasha.
17 Ask the question, please.

18 MS. PEASHA: Okay, certainly. Are you
19 aware of the rating for homeowners insurance in
20 our area, because we have a volunteer fire
21 department?

22 MR. HENDRICKSON: We're an eight.

23 MS. PEASHA: Yeah, we're an eight,
24 that's right. And in Galt?

25 MR. TEMPLETON: In the rural areas for

1 Galt is also an eight. Excuse me -- the rural
2 areas, by definition, that are not protected by a
3 hydrant within a thousand feet, are typically
4 classified as an eight.

5 MS. PEASHA: And those that are
6 protected by a hydrant?

7 MR. TEMPLETON: Then it depends upon a
8 number of other factors -- those being personnel,
9 equipment and communications, as well as the water
10 supplies.

11 MS. PEASHA: Okay. Say a small inside
12 residential area, within the city limits of Galt?

13 MR. TEMPLETON: Within the city limits
14 of Galt there is a fire protection rating of five.

15 MS. PEASHA: Okay, I was a resident of
16 Galt and lived on the other side of the freeway,
17 and was rated a three with hydrants. And now
18 we're rated an eight out here, and that's the
19 difference between our homeowners. But I just
20 want to show that that does show the response time
21 to be a little bit longer.

22 COMMISSIONER PERNELL: Thank you. Other
23 questions?

24 MR. ROSKEY: Yes sir, I have about eight
25 questions.

1 HEARING OFFICER SHEAN: Okay, identify
2 yourself.

3 MR. ROSKEY: My name is Mike Roskey, I'm
4 an Intervenor. Thank you. Number one, I'd like
5 to ask does the Herald Fire Department have a
6 ladder capable of reaching the top of the cooling
7 towers?

8 COMMISSIONER PERNELL: The top of the
9 cooling towers of the project, or the Rancho Seco
10 cooling towers?

11 MR. ROSKEY: Rancho Seco cooling towers.
12 Okay, either one, either one. Actually, I'd
13 rather hear about the CPPP cooling towers.

14 COMMISSIONER PERNELL: The question is
15 do you have a ladder that could reach the stack of
16 the proposed project?

17 MR. COHN: In order for him to answer
18 that he probably needs to know what the height is,
19 so does someone here know or at least agree on
20 what the height is?

21 MR. HUDSON: The height of the cooling
22 tower is approximately 40 feet.

23 COMMISSIONER PERNELL: All right, so do
24 you have a 40-foot ladder is the question?

25 MR. HENDRICKSON: No.

1 COMMISSIONER PERNELL: Next question?

2 MR. ROSKEY: What are the hazardous
3 materials training and capabilities and equipment
4 of the Herald Fire Department, please?

5 COMMISSIONER PERNELL: Chief, do you
6 have, can you describe your training of your
7 personnel?

8 MR. HENDRICKSON: We're trained just to
9 go to a class one, a haz one, and after that it
10 comes to -- the city and the county take over.

11 MR. ROSKEY: Next question, please.
12 What is the estimated response time for EMS
13 services to the proposed site?

14 MR. TEMPLETON: That's roughly nine to
15 ten minutes depending on which station the
16 ambulance is dispatched from.

17 MR. ROSKEY: And, sir, are you aware
18 that four minutes is the time that is usually
19 the -- you know, I mean, you have to respond in
20 four to five minutes for a person who is critical
21 condition, brain starts to go?

22 MR. TEMPLETON: You're referring to the
23 time from -- typically what we're talking about is
24 the time when someone's heart stops beating til
25 the time we start having a --

1 MR. ROSKEY: Yes, sir.

2 MR. TEMPLETON: Yes, we are aware of
3 that.

4 MR. ROSKEY: For any and all services,
5 please, could you describe any financial
6 difficulties you are having at this time, or that
7 are projected for the future, given that we have a
8 budgetary crunch coming on all sides?

9 MR. COHN: That's a pretty open-ended
10 question, and I think --

11 HEARING OFFICER SHEAN: And I'm not sure
12 that the Commission --

13 MR. ROSKEY: Well, could I ask is there
14 any projection for cutbacks in equipment and
15 personnel in any of the budget projections you
16 have at this time?

17 HEARING OFFICER SHEAN: Okay, that's a
18 different question. Go ahead.

19 MS. HOLMES: Specifically for the Elk
20 Grove Community Services District, the answer is
21 clearly no. We are growing at a very rapid pace
22 in Elk Grove, and see no current personnel
23 reductions.

24 MR. ROSKEY: And, excuse me, for the
25 county and city of Sacramento, please?

1 MR. ATWOOD: Specifically for the city
2 of Sacramento Hazardous Materials Response
3 Program, we are increasing due to a large amount
4 of grants that are coming available, and have been
5 available.

6 MS. ROTHSCCHILD: The county, Sacramento
7 County Environmental Management Department, is
8 actually growing as well, due to the increases in
9 businesses within the county.

10 MR. TEMPLETON: And the Galt Fire
11 District is also growing, as a result of the
12 increases in population, and the commercial and
13 residential buildout in Galt.

14 MR. ROSKEY: Okay. And this would
15 include your support personnel, this includes all
16 your operations?

17 COMMISSIONER PERNELL: Let the record
18 reflect that the panel is shaking it's head as
19 yes.
20 (laughter)

21 MR. ROSKEY: Yes, I'd like to ask is the
22 Applicant providing any money to the Herald Fire
23 Department for hazardous materials for training
24 and equipment, is that happening?

25 MR. HUDSON: SMUD is not allowed to

1 provide gifts, but the Applicant is working with
2 the various fire districts in the community to
3 provide appropriate response and develop
4 appropriate plans for the power plant.

5 MR. ROSKEY: Could I also ask that of
6 the county, please?

7 COMMISSIONER PERNELL: I think that what
8 the Applicant has said is that they will be
9 providing training and some equipment for --
10 equipment onsite -- for adequate fire protection.
11 They are meeting with the various fire agencies to
12 develop that plan. And I would just ask that,
13 once that plan is developed, that it come back to
14 the committee.

15 MR. COHN: I might just mention that
16 under the staff's proposed conditions, that if you
17 adopt those, that would be the case.

18 MR. ROSKEY: Is the county providing any
19 funds to the Herald Fire Department for training,
20 for equipment, for hazardous materials, or for any
21 other purpose, as a result of this project?

22 MS. ROTHSCHILD: I don't know what you
23 mean by the county.

24 MR. ROSKEY: Does any money go from the
25 county to the Herald Fire Department for any

1 purpose?

2 MR. HENDRICKSON: No.

3 MR. ROSKEY: Then there is none planned
4 as a result of this project?

5 MR. TEMPLETON: No.

6 MR. ROSKEY: The only thing that I
7 wanted to suggest to the committee is that they go
8 out and take a look at the fire equipment that is
9 about 100 paces from here that the Herald Fire
10 Department does have, and see if you think that's
11 adequate. Thank you.

12 COMMISSIONER PERNELL: Thank you. Are
13 there any other questions for the committee, I'm
14 sorry, for the panel?

15 HEARING OFFICER SHEAN: Yes, we're going
16 to wait, and once they're done --

17 COMMISSIONER PERNELL: All right.
18 Seeing none, again, I want to thank the panel.
19 I'm sure you'll be in touch with SMUD or they will
20 be in touch with you. All right, thank you.

21 HEARING OFFICER SHEAN: Okay, Mr. Boyd,
22 if you have public comment, why don't you go ahead
23 with that. We'll keep the record together on this
24 issue. Go ahead.

25 COMMISSIONER PERNELL: This is a public

1 comment on hazmat?

2 HEARING OFFICER SHEAN: Yes.

3 MR. BOYD: Hi. Okay. I'm Mike Boyd,
4 I'm the president of Californians for Renewable
5 Energy. First I would like to object to what's
6 being proposed here for the mitigation for fire
7 safety. It's, in our opinion, it's woefully
8 inadequate.

9 All you have to do is walk out there and
10 look at the equipment they have, and you'll see
11 that they don't have any of the necessary
12 equipment to do any realistic fire control at this
13 proposed project. And, frankly, I was expecting
14 more from SMUD, because SMUD is a public agency.

15 And because it's a public agency I think
16 there should be a higher standard, not a lower
17 standard, for mitigation. And what's being
18 proposed for fire mitigation here is just woefully
19 inadequate. And I trust that if you guys look at
20 the record as it's presented today that you'll
21 decide the same.

22 And I certainly hope whatever conditions
23 you put in this project that you put adequate
24 conditions to ensure they have sufficient training
25 and equipment to fight a fire at the proposed

1 project. And in light of what's happened at other
2 projects that we've been involved, for example the
3 Tracy project, they've had some major fires since
4 the project was approved.

5 And there's still not adequate equipment
6 there. And I'm afraid to say that I see the same
7 thing happening here, and I don't think that
8 should be the case, it should be just the
9 opposite. Because this is a public agency
10 applying, this isn't a corporation that's looking
11 out for their profit margin. They're supposed to
12 be looking out for the public's good. Thank you.

13 HEARING OFFICER SHEAN: Thank you. All
14 right. Why don't we all take a bit of a breather
15 here, reassemble our biology panel, and we're
16 going to get to some brief further cross from Ms.
17 Peasha and her witness and we'll keep moving on
18 biology.

19 COMMISSIONER PERNELL: We only need five
20 minutes here.

21 HEARING OFFICER SHEAN: We only need a
22 second or two here.

23 MS. HOLMES: We had requested that
24 sometime today before it gets too late we make
25 sure that the witnesses, or the representatives,

1 from the Department of Fish and Game and U.S. Fish
2 and Wildlife Service be made available for
3 questions?

4 HEARING OFFICER SHEAN: Are they going
5 to generally be discussing the permitting process,
6 and timing issues?

7 MS. HOLMES: That would be my hope. The
8 status of the permitting process and timing
9 issues.

10 COMMISSIONER PERNELL: We only have,
11 with Ms. Peasha's witness, a brief time. so this
12 is not going to take long.
13 (Off the record.)

14 COMMISSIONER PERNELL: We're back on the
15 record.

16 HEARING OFFICER SHEAN: All right, Ms.
17 Moore, we're back with your cross of the SMUD
18 witnesses.

19 MS. MOORE: Ah, Ms. Crowe, in this -- I
20 guess what we're calling Exhibit 5 that we handed
21 out this morning. When you're looking at
22 quantifying the temporary impacts of the project
23 on vernal pool species, you indicated that you
24 took in all potentially suitable habitat areas.

25 And I realize that's larger than

1 delineated wetlands, but also -- in the table of
2 summary of wetland surface areas and areas of
3 construction impacts in the Corps applications, it
4 goes through each of these wetlands one by one and
5 talks about wetland impacts.

6 And they're quantified in things like
7 drainage ditch, seasonal wetland, vernal pool.

8 Can you tell me in which one of those categories
9 you tallied up the impacts for the vernal pool
10 species?

11 MR. KOFORD: Here, I'll take that. E.J.
12 Koford. The protected organisms in vernal pools
13 are essentially the vernal pool crustacea. And
14 they don't occur in all wetland types. So
15 determining for each habitat type, whether or not
16 vernal pool crustacea could or could not occur
17 there, is a case-by-case habitat descriptor.

18 If it's a flowing stream -- say a
19 seasonal swale where there is effluvial conditions
20 -- it's unlikely fairy shrimp are going to
21 persist. if there are fish present, if there are
22 perennial vegetation that indicates that there is
23 water present year-round and therefore a lot of
24 predators, it may not be suitable for vernal
25 pools.

1 So there is a rather thick appendix to
2 the biological assessment that goes through
3 individually characterizing which were and were
4 not considered vernal pool crustacea habitat and
5 why.

6 That was submitted to Energy Commission
7 and Fish and Wildlife Service. They disagreed on
8 some of the locations, and we changed the
9 categories of those locations, and this final
10 acreage represents our final accumulated
11 determination of which of those wetlands
12 constituted fairy shrimp habitat.

13 One more important characteristic I left
14 out -- hydrology is critical. Some of these
15 ponded features, or apparent features, didn't show
16 sufficient hydrology for fairy shrimp life cycles.

17 MS. MOORE: So in this attachment to the
18 biological assessment there's some sort of a table
19 that kind of goes down feature by feature like
20 this wetland impact table does, but it addresses
21 whether or not it's considered suitable habitat?

22 MR. KOFORD: It's about an inch thick
23 document.

24 MS. MOORE: Okay. Where would I find an
25 analysis, or was an analysis done, on project

1 impacts to biological resources from emissions,
2 and how is that being mitigated?

3 MR. KOFORD: There's a calculation, if
4 recollection serves, in chapter 8.2 of the AFC
5 that calculates nitrogen impacts or nitrogen
6 emissions, and compares it to a criterion for
7 impacts to vegetation.

8 MS. MOORE: Were any of these impacts
9 found to be significant in that analysis?

10 MR. KOFORD: No.

11 MS. MOORE: Okay. I want to move on the
12 surveys for Swainson's hawk, burrowing owl, and
13 tiger salamander. I think they're attached to Ms.
14 Crowe's testimony. These were published on May
15 4th and 5th.

16 Is there a reason that these were
17 published just so recently when surveys were also
18 done last year? Is there a reason why you guys
19 had to wait until 2003 to do this? It's kind of
20 last minute. Are they still ongoing, or are these
21 surveys completed?

22 MS. CROWE: Surveys were conducted in
23 2002 and 2003, before that time.

24 MS. MOORE: Are you guys now done with
25 those surveys?

1 MS. CROWE: We're done with the pre-
2 construction surveys, and then we'll be doing
3 additional surveys prior to any ground disturbance
4 start of construction activities.

5 MS. MOORE: The surveys for Swainson's
6 hawk identifies in the survey report that they
7 were done pursuant to some protocols and
8 guidelines that you referenced. Can you tell me,
9 did you follow the protocols that were referenced
10 of Fish and Game 94 and the Swainson's hawk
11 technical advisory committee 2000?

12 MS. CROWE: Yes, those were followed.

13 MS. MOORE: Okay. For the Swainson's
14 hawk, can you tell me what months the surveys were
15 done, both in 2002 and 2003?

16 A In 2003 they were done in April, in 2002
17 they were done in April and May.

18 MS. MOORE: As I read the Swainson's
19 hawk technical advisory committees guidelines it
20 calls for nine surveys total over three different
21 timeframes. The first one being March 20 to April
22 5th, the second being April 5th to April 20th, and
23 the third being June 10th to July 30th.

24 Your company had all of last spring and
25 summer to do surveys, and just went out in May, I

1 think, of 2002. This year you completely missed
2 the first survey period window, and apparently did
3 one of the three surveys during the second
4 period --

5 MS. LUCKHARDT: I'm sorry, I believe
6 she's testifying at this point. Can we get to the
7 question please?

8 MS. MOORE: Can you explain why, when
9 your report says that you followed the guidelines
10 that call for nine surveys, that you only did one
11 survey, in April?

12 MS. CROWE: We were doing
13 present/absence surveys for nesting Swainson's
14 hawk, some pairs are still picking their locations
15 and haven't picked a certain nest tree. We will
16 be going back, once construction begins, to make
17 sure that there are no new locations. Additional
18 surveys would not change any kind of mitigation or
19 protection measures or monitoring requirements.

20 MS. MOORE: Can you tell me what time of
21 the day is the best time to do Swainson's hawk
22 surveys?

23 MS. CROWE: Usually in the morning. And
24 evenings you can also see them flying around and
25 showing courtship behavior, foraging, and so forth

1 during the daytime.

2 MS. MOORE: And when were the surveys
3 conducted, during what hours of the day?

4 MS. CROWE: They were conducted from
5 8:00 until 5:00 during the day, throughout the
6 day.

7 MS. MOORE: Do you think that 2:00 p.m.
8 is a defensible time to go out and look for a hawk
9 when the survey guidelines identify that the
10 survey should be done in the early morning?

11 MS. CROWE: In this case, yes. They
12 were flying all time of day.

13 MS. MOORE: Have you ever found that
14 weather -- particularly rainy weather like we had
15 in late April during the 11-day period that
16 surveys were done -- have you ever found that
17 birds tend to just kind of hang out under a tree
18 and not be flying around?

19 MS. CROWE: Yes. There was rainy
20 weather during the last hour of the surveys. The
21 surveys were conducted for five full days, and it
22 just rained in the very last hour.

23 MS. MOORE: And during the five days it
24 covered the whole 20-plus miles of the pipeline
25 alignment.

1 MS. CROWE: That's right.

2 MS. MOORE: I've got kind of the same
3 questions with burrowing owl. It seems that the
4 surveys you were taking were done in the right
5 time period of April 15th to June 15th because
6 they were done at the same time as the Swainson's
7 hawk surveys, right?

8 MS. CROWE: That's right.

9 MS. MOORE: You cited that you used Fish
10 and Games mitigation guidelines for burrowing owl
11 for these surveys, is that correct?

12 MS. CROWE: Yes.

13 MS. MOORE: Can you recall what times of
14 the day are identified in Fish and Games
15 guidelines as appropriate survey times for
16 burrowing owl?

17 MS. CROWE: There are no specific time
18 requirements, or weather requirements, in Fish and
19 Games guidelines.

20 MS. MOORE: Does one hour before sunrise
21 to two hours after sunrise and two hours before
22 sunset and one hour after sunset ring a bell?

23 MS. LUCKHARDT: She's already answered
24 that question.

25 HEARING OFFICER SHEAN: We'll let her

1 answer it.

2 MS. CROWE: Not in Fish and Games'
3 guidelines.

4 HEARING OFFICER SHEAN: I'm sorry, I did
5 not hear you.

6 MS. CROWE: I said not in Fish and
7 Games' guidelines.

8 MS. MOORE: In Fish and Games'
9 guidelines for burrowing owls --

10 MS. LUCKHARDT: I'm sorry, I believe
11 she's testifying.

12 HEARING OFFICER SHEAN: I'm sorry, she's
13 all done. Go ahead with your next question.

14 MS. MOORE: I'm sorry, I didn't know who
15 was being shushed here. Okay, let's talk a little
16 bit about the reptile and amphibian surveys done
17 by Dr. Jennings, and then I want to go on to
18 wetlands after that.

19 COMMISSIONER PERNELL: All right. Let
20 me just tell you that we've spent all morning on
21 this, and half the afternoon, and we want to hear
22 from Fish and Wildlife, the committee does. So
23 let me just caution you to make your questions
24 pointed, please make your answers pointed, so we
25 can get through this.

1 MS. MOORE: I'm sorry if I'm -- I'm just
2 trying to get through the material.

3 COMMISSIONER PERNELL: I understand.

4 MS. MOORE: In Mr. Jennings survey, did
5 he cover all areas within one mile of project
6 features?

7 MS. CROWE: He covered within one mile
8 of the project site, and within a thousand feet on
9 either side of the gas pipeline.

10 MS. MOORE: In his report isn't there a
11 statement that access was limited and he only
12 surveyed certain portions of the pipeline
13 alignment?

14 MS. CROWE: He surveyed the areas that
15 had suitable habitat for California tiger
16 salamanders, not all portions of the gas pipeline
17 have habitat.

18 MS. MOORE: How far does tiger
19 salamander generally -- how far are they known to
20 travel from their breeding grounds, and this is
21 just sort of a rule of thumb question to where
22 they might aestivate?

23 MS. CROWE: I'm not a California tiger
24 salamander expert, but it can be up to several
25 miles.

1 MS. MOORE: Up to several miles. Is
2 there a reason why a thousand feet was chosen?

3 MS. LUCKHARDT: I believe she's asked
4 and answered that question that that was per
5 Energy Commission guidelines.

6 MS. MOORE: Okay, for a species that can
7 travel a couple of miles we're just choosing a
8 thousand feet?

9 MS. CROWE: We were looking for breeding
10 habitat, ponds that could be affected, and none in
11 the project area will be affected, and we're
12 mitigation for aestivation habitat at the site.

13 MS. MOORE: Okay. Can you elaborate
14 then -- I'm not quite getting this. His report
15 clearly says that he did not survey all areas
16 along the pipeline due to access --

17 MS. LUCKHARDT: I'm sorry, I believe
18 she's testifying, so if she has a question she
19 should ask the question.

20 HEARING OFFICER SHEAN: She can lay a
21 foundation from the document. Go ahead, Ms.
22 Moore.

23 MS. MOORE: I could read the section
24 from the document--

25 HEARING OFFICER SHEAN: It's all right.

1 I'm just asking you to finish the question you had
2 begun.

3 MS. MOORE: The way that I read Dr.
4 Jennings' report is that he didn't survey
5 everything, the survey wasn't complete.

6 HEARING OFFICER SHEAN: Why don't you
7 refer to a page and a paragraph, and then you can
8 ask a question from that?

9 MS. MOORE: Okay. If I could draw your
10 attention from his report, please? On page two of
11 Dr. Jennings' report, the first complete
12 paragraph, second sentence, it says "as stated
13 earlier in Jennings and Padgett's floor, we were
14 largely limited to surveying and sampling aquatic
15 habitats along public roads, railroad right-of-
16 ways, Cosumnes River preserve, and the Rancho Seco
17 square, because of restrictions by private
18 landowners in the area." Do you interpret that as
19 a complete survey effort?

20 HEARING OFFICER SHEAN: Why don't you
21 just, in fairness to the record, read the
22 following sentence, that begins "however?"

23 MS. MOORE: "However, we were able to
24 survey the entire pipeline corridor and note the
25 potential for any negative effects on special

1 concern or listed species."

2 HEARING OFFICER SHEAN: Okay, then you
3 can ask your question from that point.

4 MS. MOORE: Did his survey's cover an
5 area within one mile surrounding the plant?

6 MS. CROWE: Yes.

7 MS. MOORE: Did he identify over near
8 the -- I think the Dry Creek ranch -- that there
9 were probably more tiger salamanders there but he
10 couldn't gain access to that property to survey
11 it?

12 MS. CROWE: I believe he did gain
13 access, that's where he found the larvae.

14 MS. MOORE: On the bottom of page five
15 it identifies, in the last two sentences, "there
16 are presumably other California tiger salamander
17 breeding ponds nearby on Dry Creek Ranch.
18 However, we were unable to gain access to survey
19 this property." Is that within a mile of the
20 project site, the area he's referring to?

21 MS. CROWE: I don't know.

22 MS. MOORE: Do you have a map that
23 accompanies his May 4th report? His last surveys
24 were done May 3rd, this report May 4th. Were
25 there maps that go along with it that show the

1 survey areas?

2 MS. CROWE: No. He did not provide a
3 map.

4 MS. MOORE: Are you comfortable with
5 level of coverage?

6 MS. CROWE: From Mark Jennings, yes. He
7 said that there was a pond 2.4 miles from the
8 intersection of Highway 104 and Clay East Road,
9 south of Dry Creek Ranch Road. If there are
10 additional ponds within a mile it wouldn't change
11 the mitigation or protection measures.

12 MS. MOORE: You're aware that the
13 federally listed giant garter snake was found
14 right along Twin Cities Road and Clay East right
15 there?

16 MS. CROWE: From his memo?

17 MS. MOORE: Yes.

18 MS. CROWE: Yes.

19 MS. MOORE: Have comprehensive giant
20 garter snake surveys been done?

21 MR. KOFORD: No. Habitat assessments
22 were done along the length of the pipeline
23 corridor -- and for the project site -- in
24 consultation with the Fish and Wildlife Service.
25 Craig Aubray and Ken Fuller accompanied us into

1 the field, reviewed maps of habitat assessment
2 showing potential habitat, and that was how the
3 determination was made.

4 MS. MOORE: Okay. I understand the
5 California tiger salamander is going to be
6 proposed for federal listing later this week, and
7 that makes me have a little more concerns about
8 this species, especially given --

9 MS. LUCKHARDT: Again, she's testifying,
10 she's not asking a question.

11 HEARING OFFICER SHEAN: Do you have a
12 question?

13 MS. MOORE: Are you aware that the
14 California Tiger Salamander will be proposed for
15 listing in the federal register later this week?

16 MR. KOFORD: No, I'm not.

17 MR. PEASHA: Hello? Can you hear?

18 HEARING OFFICER SHEAN: Is this Mr.
19 Peasha?

20 MR. PEASHA: Yeah, I just wanted to hear
21 the hearings a little while, if I could.

22 HEARING OFFICER SHEAN: Well, we're
23 piping you in as best we can. If you can't
24 hear --

25 MR. PEASHA: I can hear fine.

1 HEARING OFFICER SHEAN: Okay, good.

2 MS. MOORE: In light of the proposed
3 listing, do you think that further study for the
4 species may be warranted?

5 MR. KOFORD: Your concern for tiger
6 salamander is echoed by SMUD. And we had one of
7 the foremost experts on California tiger
8 salamander do the surveys in the field, look at
9 the habitats and make an assessment of their
10 presence. And SMUD's proposing specific
11 mitigation to avoid adverse impacts to California
12 tiger salamander.

13 We've anticipated throughout this
14 project that tiger salamander had a high
15 probability of becoming a listed species sometime
16 during the project, and we've always dealt with it
17 that way. It was included in the bio-assessment,
18 it was included in the Fish and Game permit.

19 We regard it as an important species and
20 we're taking steps to avoid impacts -- I'm, sorry,
21 to assess impacts -- avoid, minimize, and
22 compensate, as appropriate.

23 MS. MOORE: You guys have indicated that
24 you've been talking to Fish and Wildlife Service.
25 They've never mentioned that the tiger salamander

1 is about to be proposed for listing?

2 MR. KOFORD: I believe I already said we
3 dealt with it as a species that had a high
4 probability of becoming listed, and it's really
5 immaterial whether or not it becomes listed during
6 the course of this. We've dealt with it as an
7 important and sensitive species, and given it all
8 the deference that a fully listed species would
9 have.

10 MS. MOORE: I understand that the
11 biological assessment revision, whatever number,
12 16 or something like that, that the Fish and
13 Wildlife Service has accepted it for review
14 purposes, is that true?

15 MR. KOFORD: At the time of the
16 submittal the tiger salamander was not a listed
17 species, and therefore cannot be included in the
18 Biological Opinion.

19 MS. MOORE: I think my question is is it
20 true that the biological assessment has been
21 accepted for review by the Fish and Wildlife
22 Service?

23 MR. KOFORD: That's correct.

24 MS. MOORE: Has Dr. Jennings' survey
25 report been forwarded to them?

1 HEARING OFFICER SHEAN: Okay, apparently
2 the witness does not, Ms. Crowe does not have the
3 answer to that --

4 MS. HOLMES: I'm just volunteering the
5 answer, so we can move this along.

6 HEARING OFFICER SHEAN: Yes. And the
7 volunteered answer is?

8 MS. HOLMES: Yes, we have forwarded it.

9 HEARING OFFICER SHEAN: That survey was
10 forwarded by commission staff.

11 MS. MOORE: Okay, let's let back to
12 wetlands here, and I -- then I think that's --.
13 I'm going to refer to the wetland package
14 submitted on April 23rd and supplemented on May
15 5th by Dr. Huffman to the Corps, and it's got a
16 number of colorful plates, and I'm hoping that you
17 guys have a copy of that that you can pull out and
18 take a look at?

19 Let's start with tile three of 80. For
20 the record, I want to clarify that this is not the
21 set of tiles that I didn't get the full set. That
22 was in the big 11 X 17. So we don't have tiles
23 missing in this one, I think I've got all 80 of
24 them.

25 About how far in feet is the pipeline

1 from what's labelled --

2 MR. KOFORD: Diane, could you say the
3 number of the tile again?

4 MS. MOORE: I'm sorry. We'll start with
5 tile one. How far in feet is -- what's called
6 001-seasonal wetland -- how far in feet is that
7 located from the pipeline corridor?

8 MS. LUCKHARDT: We're getting the
9 document.

10 MS. HOLMES: Can I ask SMUD a question?
11 Has this been documented, because we're not
12 certain of that. It's our only copy that doesn't
13 have a docket stamp on it?

14 MS. LUCKHARDT: Ah, the --

15 MS. HOLMES: 404.

16 MS. LUCKHARDT: The 404 application was
17 docketed May 5th. We're confirming, we believe we
18 provided three with all the tiles to staff, but I
19 need to have --

20 MS. HOLMES: Was it listed as a informal
21 or was it a formal data response?

22 HEARING OFFICER SHEAN: Okay, this can
23 remain off the record here, until we go back on.

24 COMMISSIONER PERNELL: Are you guys
25 prepared to answer the question?

1 HEARING OFFICER SHEAN: You ready?

2 MR. HUFFMAN: It's approximately 35 feet
3 from the pipeline corridor.

4 MS. MOORE: Okay. So would this wetland
5 be considered to be impacted typically by agencies
6 such as Corps of Engineers and Fish and Wildlife
7 Service, being 35 feet away?

8 MR. HUFFMAN: Yes. And, basically, the
9 Fish and Wildlife Service would be indirectly
10 impacted. There's not a direct fill impact to it,
11 so it wouldn't be considered impacted by the
12 Corps.

13 MS. MOORE: Can you describe for me the
14 width of the construction corridor just north of
15 this wetland?

16 MR. KOFORD: Yes, the construction width
17 is generally 65 feet.

18 MS. MOORE: And that's just south of the
19 wetland, too?

20 MR. KOFORD: Yes. In places where we
21 have an adjacent wetland like this, or a narrow
22 hedge corridor, we presume that it will be
23 directly affected.

24 MS. MOORE: It'll be directly affected?

25 MR. KOFORD: Yes.

1 MS. MOORE: In table one, when I looked
2 at the summary of wetland surface areas and areas
3 of construction impacts --

4 MS. LUCKHARDT: Now is that table one
5 out of the same document?

6 MS. MOORE: Yes, it is.

7 MS. LUCKHARDT: Just so everybody can be
8 on the same page.

9 MS. MOORE: Can you tell me what the
10 acreage is within construction zone, say for that
11 wetland?

12 MR. KOFORD: We're going to construction
13 fence this to narrow the construction corridor, so
14 that they avoid.

15 MS. MOORE: So, is this tally at the
16 bottom of page one "temporary impacts along
17 natural gas pipeline", that's only for wetlands,
18 and you have a separate one for endangered
19 species?

20 MR. KOFORD: This is the wetland
21 delineation, so this addresses wetlands.

22 MS. MOORE: Okay. Let me draw your
23 attention to file 44? Can you tell me how far
24 away the pipeline is from what's labelled vernal
25 pool 80?

1 MR. KOFORD: I'd need to look at the
2 construction drawings, but I can tell you that
3 this is a problematic area, where we had a very
4 narrow construction corridor, and since the
5 wetland delineation has gone in, I think we have a
6 way to avoid that area by more than 100 feet by
7 using directional drilling.

8 So the wetland delineation represents
9 our conservative estimate that we would directly
10 affect that pool. We believe now, having talked
11 to the folks that might construct this, that we
12 can probably avoid that pool by 100 feet.

13 There are several cases in this project
14 where we've enveloped and assessed what we
15 consider to be the conservative impact -- that is,
16 the worst-case impact -- and you put your finger
17 on one that we really didn't think we have avoided
18 enough, and we've got a better method to escape
19 that vernal pool, to get away from that vernal
20 pool.

21 MS. MOORE: Okay, so you guys are trying
22 to bore and jack under that whole segment there,
23 correct?

24 MR. KOFORD: That's correct. We're
25 looking into the feasibility, and I don't think

1 I'm speaking out of turn to say that it does look
2 feasible to actually extend that bore another 100
3 feet to the south.

4 MS. MOORE: So if you were actually able
5 to do that that would reduce the wetland impacts?

6 MR. KOFORD: That's correct. But
7 considering the schedule implications we would not
8 probably change our application.

9 MS. MOORE: Okay. In reading table one,
10 the acreage of that pool, when I look at the
11 picture the pipeline's right on the edge of that
12 pool, when I look at the construction -- can you
13 tell me, what is the acreage that's shown as in
14 the construction zone there?

15 MR. KOFORD: It says zero.

16 MS. MOORE: But you just said this
17 thing, you assumed that it was going to be
18 impacted?

19 MR. KOFORD: No. I said we found a way
20 we're going to avoid that vernal pool. There is,
21 at that location, an old paved road that comes up
22 diagonally between Arno and 99. It's
23 approximately 15 feet wide.

24 That road probably filled an old vernal
25 pool, and if you were looking at this tile -- and

1 I apologize to those of you that aren't -- it
2 appears to have split that vernal pool in half.

3 Had we constructed in the way that we
4 show on this graphic, the constructors and
5 everyone else knew that they would have an
6 extremely constrained construction corridor
7 through there. Essentially, the width of the
8 paved road.

9 And that would be necessary to avoid any
10 impacts to that vernal pool. That's why we worked
11 pretty hard to figure out a way to not have to do
12 that portion of this construction, to extend the
13 bore.

14 MS. MOORE: But for right now, this
15 possible future boring and jacking is something
16 that's being looked at, but the proposed project
17 this area's going to be trenched through, and
18 that's what this application reflects, is that
19 correct?

20 MR. KOFORD: Yes, that's correct.

21 MS. MOORE: Can I assume then that the
22 entire acreage of vernal pool 80, not just the
23 portion of it that's within what you guys have
24 described as the limit of the wetlands survey
25 area, that the entire acreage is included in the

1 summary table that Ms. Crowe handed out?

2 MR. KOFORD: I'm sorry, I don't know
3 which table you're referring to. If you're asking
4 whether the entire vernal pools were considered as
5 indirect impact, I'm certain from what I see there
6 that they were.

7 MS. MOORE: Okay. What I'm specifically
8 referring to is that the construction in this
9 figure, in this tile 44, an area of less than 250
10 feet to the north of the pipeline, as shown as
11 being mapped with the habitats, are mapped for
12 less than 250 feet.

13 I'm wondering if the wetlands, if the
14 survey area for endangered species was 250 feet on
15 either side of the pipeline, was it a wider
16 survey, and are there detailed maps that show a
17 larger delineated area?

18 MR. KOFORD: I believe you asked me that
19 question earlier today. This is the wetland
20 delineation, and it goes out to 200 feet. And I
21 believe in the previous answer I said that the
22 endangered species surveys went out further. If
23 you want to see what was covered for the
24 endangered species surveys you won't find that on
25 the wetland delineation maps.

1 MS. MOORE: I realize that, I'm just
2 asking if the portion of the pool that extends
3 outside of the wetland delineation boundaries was
4 included in the calculation of indirect impacts
5 for sensitive species?

6 MR. KOFORD: Yes, it was.

7 MS. MOORE: Okay. Moving on to tile 45,
8 I see a big vernal pool located immediately north
9 of the dairy there, on the north side of Arno
10 Road, and I see the pipeline about 150 feet to the
11 south. This vernal pool is, I don't know, can you
12 give me, just looking at it, an estimate of its
13 size?

14 MR. KOFORD: No, I can't.

15 MS. MOORE: Can you tell me if this
16 vernal pool was included in the quantification of
17 potentially impacted vernal pool habitat?

18 MR. KOFORD: It was considered in the
19 assessment, but there's an intervening road which
20 presents a hydrologic barrier.

21 MS. MOORE: Could you pull out for me
22 the final staff assessment, and turn to page 4-18?
23 And could you tell me what the last sentence of
24 the second paragraph under "permanent and
25 temporary loss of wetland habitat", what the last

1 sentence reads, "due to the nature?"

2 MR. KOFORD: "Due to the nature of
3 vernal pool and seasonal swale soils and
4 hydrology, and the need for the hard pan layer and
5 uplands around the pool to stay intact to protect
6 the integrity of the pool, any disturbance within
7 250 feet of a pool or complex would result in a
8 significant impact to that pool."

9 MS. MOORE: Is this pool within 250 feet
10 of the pipeline?

11 MR. KOFORD: Yes, it is.

12 MS. MOORE: But it's not included in the
13 compilation of acreage for vernal pool species?

14 MR. KOFORD: No, it is not.

15 MS. MOORE: Can you explain why you've
16 deviated from staff's standard?

17 MR. KOFORD: I disagree with staff's
18 standard. This standard, as stated, doesn't
19 reflect either the Fish and Wildlife Service
20 policy and the programmatic assessment or the
21 process we used.

22 I don't want to put words in staff's
23 mouth, but I believe that they were trying to be
24 generic and not specific in expanding on this.
25 Staff is correct that generally we would consider

1 all pools within 250 feet to be potentially
2 affected.

3 I think a close reading of the
4 programmatic Fish and Wildlife Service opinion
5 would show that it says something like "where
6 other data are lacking" pools within 250 feet
7 should be considered potentially affected.

8 Applicant has outlined very clearly in
9 the biological assessment the criteria they used
10 to determine whether or not there is a hydrologic
11 connection between a vernal pool. Certainly in
12 the case where there's a road or an excavation or
13 a topographic break that would interfere with the
14 hydrology, those were considered to interfere with
15 the 250 foot standard.

16 Therefore, impacts on the opposite side
17 of a road fill a deep cut that would interfere
18 with the hydrology -- that were not connected by
19 culverts -- were considered outside the affected
20 area.

21 MS. MOORE: And who will be the ultimate
22 authority of whether or not they believe that
23 there is a physical barrier that would qualify
24 this pool to not be considered impacted, given
25 that it's only about 100 feet away?

1 MR. KOFORD: The U.S. Fish and Wildlife
2 Service.

3 MS. MOORE: And that would be in their
4 Biological Opinion?

5 MR. KOFORD: That's correct.

6 MS. MOORE: Do you have an estimated
7 date of when the Biological Opinion is expected to
8 be published?

9 MR. KOFORD: I wouldn't speak for the
10 Service, they're here.

11 MS. MOORE: I've used that line before.

12 HEARING OFFICER SHEAN: Well, as soon as
13 you're done, we'll hear from them.

14 MR. ROSKEY: I have some questions, too.

15 HEARING OFFICER SHEAN: Okay, well,
16 intervene.

17 MS. MOORE: I want to move onto tile 46
18 now. Under vernal pool, number 86, with respect
19 to the pipeline alignment?

20 MR. KOFORD: Yes, it appears to be
21 directly within the area that will be affected.

22 MS. MOORE: Would you describe the
23 pipeline as going right through that pool?

24 MR. KOFORD: In this depiction it shows
25 it that way. I would feel more comfortable

1 looking at the construction drawings which would
2 have more specific alignments than in this
3 depiction.

4 MS. MOORE: Okay. Is it pretty clear in
5 looking at this drawing that that vernal pool is
6 within the construction corridor limit?

7 MR. KOFORD: Yes.

8 MS. MOORE: Is it exactly centrally
9 located within the corridor limit, and the
10 pipeline is shown as going through it?

11 MR. KOFORD: It's reasonably centrally
12 located.

13 MS. MOORE: Can you tell me, on table
14 one, what the acreage reads for how much of that
15 pool is within the construction corridor?

16 MR. KOFORD: It appears most of it --
17 .226, is that the right line? I'm sorry, that is
18 not the right line. None of it, zero.

19 MS. MOORE: So in this table, that's a
20 quantification of the wetland impacts, it shows
21 that that vernal pool that's centrally located in
22 the construction corridor is not included in the
23 tally?

24 MR. KOFORD: I think if you looked at
25 the construction drawings you'd see that it's

1 avoided in some way. I'd have to refer to those.

2 MS. MOORE: It doesn't appear to me that
3 it's being avoided, but even if it was, it is
4 centrally located within the construction
5 corridor, correct?

6 MR. KOFORD: That appears to be a boring
7 crossing, Diane, and so if the boring actually
8 came up behind the pool or was moved back it could
9 be avoided. I can't tell from this drawing
10 precisely what the construction details for that
11 location were, but I can guess that if that table
12 says it's avoided, that if we looked at the
13 details we'll find out why it's listed as avoided.

14 MS. MOORE: Can you guys explain to me
15 why the survey corridor width changes throughout
16 the length of the pipeline alignment?

17 MR. KOFORD: Sure. There are places
18 that we know we're constrained on one side or the
19 other, that we're not going to go past a road or a
20 railroad or a right-of-way on one side. Secondly,
21 there are areas where we specifically wanted to
22 minimize the width of the construction corridor to
23 avoid sensitive biological resources.

24 There are areas near HDD's where we need
25 to do pipe laydown, and therefore need, in

1 addition to the normal 65 feet, an additional 35
2 feet to lay down pipe. And in that additional 35
3 feet of construction area all we do is set a large
4 piece of pipe on the ground, so that constitutes
5 the total disturbance. But it's surely within the
6 construction area.

7 So, in some cases, the width of the
8 corridor might be 100 feet, in some cases it might
9 be as narrow as 35 feet, which is about the
10 narrowest practical limit of construction above
11 ground.

12 MS. MOORE: In light of the fact that
13 staff has identified that any disturbance within
14 250 feet of a pool or complex would result in a
15 significant impact to that pool, can you explain
16 to me why a 500-foot wide survey corridor was not
17 chosen for the wetland delineation?

18 MR. KOFORD: There are plenty of places
19 along the corridor where adjacent habitat is
20 simply unsuitable -- it's agricultural, it's
21 disked, it's landscape, it's vineyards -- so in
22 areas where potential habitat existed beyond a 200
23 foot corridor, it was assessed, in areas where
24 habitat appeared to be unsuitable it was not. Or
25 rather it was assessed merely by habitat site.

1 MS. MOORE: Dr. Huffman, how long do you
2 think it will -- I shouldn't make you try to
3 guesstimate the federal agencies. How long do you
4 perceive, with all your experience in wetland
5 permitting, it taking to get a permit decision on
6 this project?

7 MR. HUFFMAN: You're referring to the
8 Corps of Engineers permit process?

9 MS. MOORE: Yes.

10 MR. HUFFMAN: Well, the southern answer
11 would be "awhile." It will probably be several
12 months.

13 MS. MOORE: Okay.

14 MR. HUFFMAN: And that's taking into
15 account that the biological assessment is about
16 ready to come out, I've been told, and so, with
17 that in hand, the Corps can move through the
18 process within that time period, or should be able
19 to. But again, it's depending on manpower
20 constraints and other priorities. I think that's
21 a reasonable time period.

22 MS. MOORE: When you said the biological
23 assessment is about to come out, I thought that
24 had already been submitted for review to the
25 Service. Is there another one being prepared?

1 MR. HUFFMAN: I think I misspoke. I
2 meant Biological Opinion.

3 MS. MOORE: Okay. We're hoping to see
4 that soon?

5 MR. HUFFMAN: I think we are, yes.

6 MS. MOORE: Do you generally find that,
7 once a public notice is published, that the Fish
8 and Wildlife Service provides a comment letter
9 that has, you know, some meaningful information
10 that generally mirrors what their upcoming bio-
11 opinion will say?

12 MR. HUFFMAN: Well, they try, but
13 there's two different departments in the U.S. Fish
14 and Wildlife Service -- I'll call them
15 departments. One deals with endangered species,
16 and one deals with 404 impacts related to the
17 waters of the United States, including wetlands.

18 And so there can be the types of
19 comments you indicated, or there can be additional
20 comments concerning avoidance and minimization of
21 impacts.

22 MS. MOORE: Once the Biological Opinion
23 comes out, you think we're talking about a couple
24 of months maybe until you see a 404 permit?

25 MR. HUFFMAN: Several months, yes.

1 MS. MOORE: Several months, okay. I
2 want to refer to data responses informal set 16.
3 On page three -- I guess it's page three, the
4 cover letter is page one. I hope I have the right
5 thing, it's labelled page three, but it's the
6 first page behind the cover page.

7 The data request -- and this was out of
8 the FSA -- was to provide a copy of the management
9 plan for the preservation of vernal pools, and you
10 guys have provided a copy of the management plan
11 and it's reference says "bio-12A," it's an
12 attachment. Can you tell me who authored this
13 thing?

14 MS. LUCKHARDT: Do you guys have a copy
15 of that? Mr. Hudson, do you have a copy of that
16 available? Do you remember the question that was
17 asked?

18 MR. HUDSON: If you could repeat the
19 question, I'd appreciate it.

20 MS. MOORE: I'm -- who wrote the,
21 there's no letterhead on Bio-12A, I just want to
22 know who prepared this?

23 MR. HUDSON: It was put together by
24 myself and CH2M Hill staff. Oh, the attachment?

25 MS. MOORE: The summary says

1 "Conservation Resources LLC," is that you guys?"

2 MR. HUDSON: No. Conservation Resources
3 is the mitigation bank manager for Laguna Creek
4 mitigation bank. And it was -- they were the ones
5 I obtained this document from.

6 MS. MOORE: Do you know when this
7 management and operations, this conceptual
8 operations and management plan -- does it have a
9 date on it?

10 MR. HUDSON: No, it doesn't have a date,
11 I don't know when they authored it.

12 MS. MOORE: Do you know if it was like
13 two months ago, or a year ago, or three years ago?

14 MR. HUDSON: I would say probably a
15 couple of years ago, but I'm not certain.

16 MS. MOORE: On a management plan I
17 usually see maps and things associated with it.
18 Is this their whole management plan, is there
19 more?

20 MR. HUDSON: To my understanding, this
21 is the total sum.

22 MS. MOORE: One of the items that was
23 supposed to be provided related to this management
24 plan was a property analysis record. Is that
25 included in here?

1 MR. HUDSON: No, it's not.

2 MS. MOORE: Is there a reason that
3 wasn't -- is that not done?

4 MR. HUDSON: The property analysis
5 record would have been for onsite mitigation at
6 Rancho Seco. This is a mitigation bank that has
7 been approved by the U.S. Fish and Wildlife
8 Service, and is on the U.S. Fish and Wildlife
9 Service website. So that's all that was needed
10 for this particular mitigation.

11 MS. MOORE: Has this been approved by
12 Fish and Game also?

13 MR. HUDSON: For which species?

14 MS. MOORE: Well, we're dealing with
15 vernal pools here, right?

16 MR. HUDSON: I don't know if Department
17 of Fish and Game would approve anything for a
18 federally-listed species.

19 MS. MOORE: Okay. But has the Corps
20 approved it?

21 MR. HUDSON: I don't know if they have
22 or not, I presume that they did.

23 MS. MOORE: Okay. On item number two it
24 talks about wanting a management -- or what's
25 called "B" in the data request -- a management

1 plan for created mitigation pools. That's going
2 to be a wildlands mitigation bank up in Sheridan,
3 is that correct?

4 MR. HUDSON: That is one of the options,
5 yes.

6 MS. MOORE: And you're within the
7 approved mitigation area for that mitigation bank?

8 MR. HUDSON: Yes.

9 MS. MOORE: For the giant garter snake,
10 the staff asked for a management plan for 41.5
11 acres of giant garter snake habitat, including the
12 property analysis record, a signed confirmation
13 letter from the management entity, and the
14 response is that this management plan is
15 confidential.

16 This management plan, where is it
17 called? It's a confidential plan, is that why it
18 wasn't provided?

19 MR. HUDSON: Yes, it was.

20 MS. MOORE: Just this letter of
21 confidentiality?

22 MR. HUDSON: Yes. A letter for request
23 for confidentiality was filed with the Energy
24 Commission on behalf of Wildlands, and Wildlands
25 considers this to be business proprietary -- the

1 management plan, that is.

2 It's our understanding that they've
3 spoken with the U.S. Fish and Wildlife Service
4 regarding this proposed bank, and information
5 regarding this has been communicated to the Energy
6 Commission.

7 MS. MOORE: Okay. So does a management
8 plan exist for this giant garter snake mitigation
9 area?

10 MR. HUDSON: My understanding is that an
11 executive summary of the management plan exists.

12 MS. MOORE: A conceptual one, you
13 believe, exists?

14 MR. HUDSON: That's my understanding,
15 yes.

16 MS. MOORE: Would it surprise you if I
17 told you that I was told last week by Wildland
18 staff that it doesn't exist?

19 MR. HUDSON: No, it wouldn't. The
20 Wildland staff has successfully instituted GGS
21 mitigation banks in the past, they have samples
22 which they could provide to the Energy Commission,
23 and it's my understanding that they were going to
24 forward an executive summary of their management
25 plan to the Energy Commission for this particular

1 bank.

2 MS. MOORE: I have great faith in
3 Wildlands, too, they're good. The fourth item was
4 that you guys were going to be looking at proposed
5 language for a conservation easement for
6 Swainson's hawk.

7 And can you read the response on item
8 D -- I'm still looking at what we're calling
9 informal set 16 -- item D says that you need to
10 provide proposed language for a conservation
11 easement of 51.9 acres at a Fish and Game approved
12 mitigation bank or on SMUD-owned property for
13 Swainson's hawk. Can you read the response?

14 MR. HUDSON: The response I can read,
15 the first sentence there is incorrect. It says "a
16 copy of the management plan for giant garter snake
17 habitat is provided in attachment Bio-12A." That
18 appears to me to be a cut and paste error in this.

19 In fact, a copy of the draft error for
20 Terry Roscoe to sign, from Conservation Resources,
21 is provided in attachment Bio-12C. The management
22 plan for the vernal pool habitat is provided in
23 attachment Bio-12A, not for the giant garter
24 snake.

25 MS. MOORE: On Bio-12C, which I think is

1 the correct -- I mean, it calls for a management
2 plan for Swainson's hawk but we got a letter. Can
3 you tell me who authored this letter?

4 MR. HUDSON: The letter is a standard
5 form letter that Conservation Resources uses in
6 conjunction with Department of Fish and Game to
7 countersign that the Department of Fish and Game
8 authorizes this for Swainson's hawk habitat
9 mitigation.

10 MS. MOORE: Can you tell me who authored
11 this letter?

12 MR. HUDSON: Conservation Resources.

13 MS. MOORE: Do they usually put their
14 letters on letterhead, or is it always something
15 like this?

16 MR. HUDSON: They usually put it on
17 letterhead, this is an electronic copy.

18 MS. MOORE: So this Erin Hom actually
19 wrote this letter?

20 MR. HUDSON: Yes.

21 MS. MOORE: Do you have a signed copy
22 from them?

23 MR. HUDSON: No, I do not.

24 MS. MOORE: Item 4 calls for the
25 proposed language for conservation easement. Can

1 you tell me where that proposed language is?

2 MR. HUDSON: The conservation easement
3 language is included with the vernal pool
4 mitigation management plan. The vernal pool
5 mitigation management plan uses the same property
6 for Swainson's hawk habitat mitigation, and
7 easement language is included in that document.

8 MS. MOORE: Are you saying that in Bio-
9 12A there's language for a conservation easement?

10 MR. HUDSON: It's my understanding there
11 is, yes.

12 MS. MOORE: Can you point me to where
13 that is?

14 MR. HUDSON: You'll notice on page
15 eight, third paragraph down, it talks about a
16 conservation easement endowment, in the amount of
17 \$35,903, has already been paid to the Center for
18 Natural Land Management, and that's the language
19 that I was referring to for conservation easement.

20 MS. MOORE: I've got a copy of some
21 draft conservation easement language that's used
22 by Fish and Game and Fish and Wildlife Service,
23 it's about 20 pages long, not just a sentence. is
24 there an easement --

25 MS. LUCKHARDT: I believe she's

1 testifying again.

2 HEARING OFFICER SHEAN: It's not a
3 question.

4 MS. MOORE: Okay. I'm not reading this
5 sentence as a conservation easement. Is this a --

6 HEARING OFFICER SHEAN: Now that's an
7 argument. If you have a question for him,
8 formulate it as a question, and we'll go from
9 there.

10 MR. HUDSON: I can probably answer your
11 question. At the top of page five, it says "this
12 easement will be held by the Center for Natural
13 Lands Management, as agreed upon previously." To
14 my understanding that's easement language.

15 MS. MOORE: Do you consider this
16 inclusion of this 10-page conceptual mitigation
17 bank plan to fulfill the detailed requirements
18 outlined in staff's April 23rd letter?

19 MR. HUDSON: I do, and it's not
20 conceptual. It's the actual measurement and
21 operations plan for that bank.

22 MS. MOORE: Do you have maps that show
23 where this area is?

24 MS. LUCKHARDT: I believe that's been
25 asked and answered.

1 HEARING OFFICER SHEAN: He testified he
2 had no maps earlier.

3 MS. MOORE: What?

4 HEARING OFFICER SHEAN: When you asked
5 him earlier and you asked about maps that, you
6 said that in your opinion these things ordinarily
7 had maps, and asked him if it had maps, he said
8 no.

9 MS. MOORE: Okay. On item five, or item
10 E in this thing, have you guys prepared a new
11 BRMIMP?

12 MR. HUDSON: The BRMIMP, yes.

13 MS. MOORE: And does it include all of
14 the updated mitigation measures that SMUD proposed
15 in the biological resources assessment, the
16 wetland delineation report, and staff's comments?

17 MR. HUDSON: Yes, it does. The BRMIMP
18 is actually a living document, and is designed to
19 be revised as the project progresses, and we've
20 included all the information to the extent
21 possible as it became available.

22 MS. MOORE: So that will be updated in
23 the future also?

24 MR. HUDSON: Yes, it would.

25 MS. MOORE: Looking at this one location

1 where the pipeline appears to be going through --
2 I think what we called vernal pool 86 -- are you
3 seeing a need for further refinement of your
4 impact analysis that's been submitted to the
5 Corps?

6 MR. HUFFMAN: I'm looking at direct
7 impacts, and this looks like an area of indirect
8 impact, and that's being considered as part of the
9 package that's being provided to the U.S. Fish and
10 Wildlife Service for their impacts to vernal pool
11 fairy shrimp.

12 And so, I'm not really focused on that
13 as a direct impact in the Corps permit
14 application, although the Corps will use that
15 information it receives from the Fish and Wildlife
16 Service and condition the permit to require
17 mitigation for the indirect impact.

18 MS. MOORE: So, in your experience, the
19 Corps also looks at indirect impacts to wetlands?

20 MR. HUFFMAN: They do, but in this case
21 they'll be looking at it from the standpoint of
22 what -- they're required under the Fish and
23 Wildlife Coordination Act and the Endangered
24 Species Act both to give great deference to the
25 opinions of resource agencies, such as the U.S.

1 Fish and Wildlife Service and California
2 Department of Fish and Game.

3 And in their final considerations
4 they'll look to what the Biological Opinion says
5 and the mitigation requirements, and they'll make
6 a determination if it's reasonable and practicable
7 and capable of being accomplished.

8 The short answer is yes, they will
9 consider that impact, but they will take it under
10 advisement from the U.S. Fish and Wildlife Service
11 when they consider it.

12 MS. MOORE: I've just got a couple more
13 questions on wetlands, and then I'm done. Sorry
14 for taking so long with this. This is related to
15 wetlands and alternative analysis. I did look at
16 your alternatives analysis during lunch, so --
17 I'll read it tonight.

18 Are you aware that the 30 acres site is
19 sized to phase both the 500 megawatt project
20 that's on the table as well as a future potential
21 project?

22 MR. HUFFMAN: Yes.

23 MS. MOORE: So right now would you agree
24 that, since phase two is not being built right now
25 and hasn't been approved and may never be built,

1 do you agree that there's extra room in this 30
2 acre area?

3 MS. LUCKHARDT: I object to the
4 characterization --

5 HEARING OFFICER SHEAN: Extra room?

6 MS. MOORE: Other than what's needed for
7 the footprint of the project plant?

8 MS. LUCKHARDT: Are you asking Mr.
9 Huffman for a determination of how much laydown
10 this project needs? If so, I don't believe he's
11 qualified to make that determination.

12 HEARING OFFICER SHEAN: Are you just
13 trying to make the point that if phase two is not
14 built then they have a graded site that is larger
15 than what they would have needed?

16 MS. MOORE: What I'm trying to figure
17 out is whether or not there is a reason that he
18 didn't look at using a portion of the 30 acre site
19 for laydown of phase one. That wasn't identified
20 as one of his alternatives in his alternatives
21 analysis, and I'm thinking that maybe he doesn't
22 know that there's room there.

23 HEARING OFFICER SHEAN: That was the
24 subject of testimony when we here before, so we're
25 going to stay off of that, because it had been

1 asked and answered at that point with regard to
2 the remainder of the project sites as opposed to
3 the laydown site.

4 That's been addressed already, I do
5 recall that. Not from a biology point of view,
6 but from a use point of view.

7 MS. MOORE: No, I'm talking about --

8 HEARING OFFICER SHEAN: Now, let me just
9 say that, Ms. Moore, we've been about a little
10 over an hour here, and you told us it would be
11 about an hour, so I'm going to give you two more
12 questions, focus on them, get the ones you want,
13 the zingers, and then we're going to move to
14 hearing from the Fish and Wildlife and the CDF
15 people.

16 MR. ROSKEY: Sir, I would like to ask --

17 HEARING OFFICER SHEAN: I understand.
18 They have been sitting here as a public agency
19 representative, we're going to have them tell us
20 what they can tell us, and then they'll go and
21 then we'll get to you.

22 MS. MOORE: Okay, Mr. Shean, I
23 respectfully request that you don't hurry me. I'm
24 pretty much --

25 HEARING OFFICER SHEAN: I know. And I

1 respectfully request that you ask two more
2 questions, and then we'll conclude your cross-
3 examination.

4 MS. MOORE: I respectfully request that
5 I be allowed to continue for as long as I
6 indicated that it would take. I asked that --

7 COMMISSIONER PERNELL: All right. I do
8 believe this is a committee's decision. You have
9 two questions, two. And I respect your
10 respectfully request -- this is a committee's
11 decision. We gave you a lot of time, you have two
12 questions.

13 MR. ROSKEY: If I could ask a question
14 please? How is it that you can have a complete
15 evidentiary hearing if you do not let people ask
16 relevant questions pertaining to a project?

17 COMMISSIONER PERNELL: We intend to let
18 everybody ask questions. We've got a time
19 constraint, and so let me just -- Ms. Peasha,
20 direct your assistant to ask the questions. Once
21 we're done with this, if she's got additional
22 questions, she can come back. But you've got two
23 questions, ask them now, please.

24 MS. MOORE: Dr. Huffman, from a wetlands
25 perspective, wouldn't using part of the overall 30

1 acre CPPP site for the laydown of phase one be a
2 pretty good alternative that the Corps may very
3 well choose as the best alternative?

4 MR. HUFFMAN: Well, we have to look at
5 the overall project, and the overall need of the
6 project, and so we'd have to look at the entire 30
7 acres as being impacted.

8 MS. MOORE: Thank you all for your time.

9 HEARING OFFICER SHEAN: Thank you. If
10 we can just interrupt this, just so we can have
11 our agency representatives come up and give us
12 some of the information that they have with
13 respect to their permitting processes and their
14 status. Can we --

15 MR. ROSKEY: Sir, can I ask a question,
16 please?

17 COMMISSIONER PERNELL: Could we go off
18 the record until they -- you want your question on
19 the record?

20 MR. ROSKEY: Yes, please.

21 COMMISSIONER PERNELL: Go ahead, ask
22 your question.

23 MR. ROSKEY: Who's witnesses are these,
24 please?

25 COMMISSIONER PERNELL: What was the

1 question?

2 MR. ROSKEY: Who's witnesses are these

3 -- staff, Applicant -- who are these witnesses?

4 HEARING OFFICER SHEAN: These are agency
5 representatives who are not here testifying, but
6 are providing a report on the status of the state
7 and federal review processes. They are not
8 witnesses, this is a status report.

9 MS. MOORE: So this is not on the
10 record?

11 HEARING OFFICER SHEAN: It is on the
12 record, it is not sworn testimony. It is a status
13 report.

14 MR. GIFFORD: Actually, we'd like to --
15 we're available for questions. We didn't come
16 with prepared material or anything like that. So
17 if there are questions we'd be happy to entertain
18 questions.

19 HEARING OFFICER SHEAN: All right. The
20 reason the committee had asked -- and the staff
21 has in turn asked you to come -- is to give us a
22 status report with respect to the ongoing reviews
23 by your agencies, and essentially, what's going
24 on, what are the likely timeframes.

25 And simply because those are

1 speculative, we don't ask you to testify to them,
2 but can you give us, you know --

3 MR. GIFFORD: Sure. Let me just start
4 off with a little bit of information, and then if
5 there are questions --

6 HEARING OFFICER SHEAN: And if you'll
7 really start off with your name please, sir?

8 MR. GIFFORD: Dan Gifford with Cal Fish
9 and Game. Fish and Game has been reviewing the
10 AFC and we've made letter comments, written
11 comments, to the staff. And also as well e-mail
12 to the staff. My point of contact has been
13 Melinda.

14 So we've made comments as a trustee
15 agency through CEQA, their CEQA equivalent, and
16 gone right along. And also will be issuing a 2081
17 permit under purview of the state Endangered
18 Species Act. We initiated that process a month
19 and a half ago, maybe it's going on two months, I
20 don't have the exact date.

21 And if I could characterize it, halfway
22 through that process we have some new -- the first
23 iteration or draft of our 2081 permit had
24 mitigation requirements that now I see have
25 changed, so those will have to be changed,

1 reflected.

2 They'll go through our local regional
3 office and then be forwarded to our legal section.
4 The first phase of it goes through biologists,
5 which goes through -- I would characterize --
6 relatively quickly. Then it's handed off the the
7 lawyers, and I would render that it slows down
8 appreciably at that time.

9 HEARING OFFICER SHEAN: That sounds like
10 an editorial comment?

11 MR. GIFFORD: That was an editorial
12 comment. And that's where we're at. Like I said,
13 I didn't come prepared to say anything. Are there
14 any questions regarding where we're at in our
15 process?

16 Our permit will cover Swainson's hawk
17 and -- someone on your staff can stop me when I
18 say the wrong thing -- that covered in the draft
19 permit, as it stands right now, giant garter
20 snake, and possibly that's all.

21 MS. MOORE: Can we ask Mr. Gifford a
22 couple of questions?

23 HEARING OFFICER SHEAN: Sure.

24 MS. MOORE: With the proposed listing of
25 the burrowing owl, are you ready to roll that into

1 2081 authorization too?

2 MR. GIFFORD: No, the way that works is
3 that the Center for Biological Diversity just sent
4 an application for a listing to the Fish and Game
5 Commission. They have 90 days to determine
6 whether or not they're going to accept that
7 petition.

8 At the time they do accept it, then we
9 have to treat it like a candidate. It would be
10 included in the 2081 permit, but not currently.

11 COMMISSIONER PERNELL: Does that have to
12 be voted on by Congress in order to be a listed
13 species, or is that an agency determination?

14 MR. GIFFORD: It's a state Fish and Game
15 Commission determination.

16 COMMISSIONER PERNELL: Okay.

17 MS. MOORE: Mr. Gifford, what do you
18 think the likelihood -- we've been working on
19 burrowing owls together for years -- what do you
20 think the likelihood of burrowing owl getting
21 listed is, do you think it's high?

22 MR. GIFFORD: Oh, I don't know. I
23 actually don't have an opinion on that. A
24 previous petition was offered, and was rejected at
25 that time. So I don't know. I've just now

1 started reviewing the petition package, and I'm
2 not really that familiar with it.

3 MS. MOORE: Okay. Can you just give me
4 a ballpark estimate of how long something takes to
5 get through your legal division?

6 MR. GIFFORD: Well, it's a snap.
7 Somebody else characterized it as a matter of a
8 few months, I think that maybe might be a --
9 Southern would be awhile, a few months would be my
10 guess.

11 COMMISSIONER PERNELL: Does staff have
12 any questions?

13 MS. HOLMES: Yes, I have a couple of
14 questions. First of all, have you seen a copy of
15 the letter that was discussed earlier? It's a
16 draft letter that SMUD provided as part of an
17 informal data response with a signature block for
18 the California Department of Fish and Game.

19 It has to do with Swainson's hawk
20 mitigation. Have you seen that letter?

21 MR. GIFFORD: Briefly, today.

22 MS. HOLMES: And do you have any sense
23 of what the status is of the Department's response
24 to that letter?

25 MR. GIFFORD: That's what I referred to

1 earlier. The early draft of our 2081 permit
2 showed SMUD mitigating onsite, and we were working
3 out the details of that. And that, I am told, has
4 recently changed, and SMUD would want to mitigate
5 at a mitigation bank.

6 Actually, this will have to be approved
7 by someone in our regional office, and we haven't
8 started that discussion yet.

9 MS. HOLMES: And is that the process
10 that you were referring to. that could take
11 several months?

12 MR. GIFFORD: Actually, no, that was the
13 lawyer part. The appropriateness of the
14 mitigation -- the location, the amount, etc. will
15 first go through review and then be forwarded
16 until it's finally signed off by the Director.

17 MS. HOLMES: So, I'm just trying to get
18 a sense -- and I know you don't want to commit to
19 anything -- of how long it's going to take for the
20 mitigation to be approved by Fish and Game?

21 MR. GIFFORD: Yeah, that's -- well, we
22 gave the Applicant a medley of opportunities, and
23 this is one of those, and we'll just have to grind
24 it through. I really can't give you a sense of
25 how long that would take.

1 MS. HOLMES: And do you not issue the
2 2081 permit until after there's a Biological
3 Opinion?

4 MR. GIFFORD: That's exactly -- well, we
5 need a certified CEQA document. So this
6 proceeding here --

7 MS. HOLMES: So this proceeding. And
8 how long after -- typically, in your experience --
9 how long after the Energy Commission's decision is
10 docketed does it take to issue a 2081 permit?

11 MR. GIFFORD: Since this is not a
12 complicated issue, there's only a couple of
13 species there, I shouldn't think it would take --
14 I'm going to go back to awhile again.

15 HEARING OFFICER SHEAN: Can I just ask,
16 with respect to this certified CEQA document, are
17 you expecting that -- well, let me just ask it
18 this way. Will the substantive review that you
19 are doing be folded into that CEQA process, or is
20 this a substantive review on the adequacy of this
21 Swainson's hawk mitigation that you would do
22 afterward?

23 MR. GIFFORD: We, under the newly-
24 revised California Endangered Species Act, we have
25 to satisfy that the mitigation contained -- and

1 pursuant to our 2081 permit -- fully mitigates all
2 the impacts.

3 So we'll be looking to this CEQA process
4 as part of that assurance that the impacts have
5 been fully mitigated. That's why we need a
6 completed CEQA document. We make findings for our
7 2081 permit.

8 HEARING OFFICER SHEAN: And this is as
9 to state endangered species?

10 MR. GIFFORD: Correct.

11 HEARING OFFICER SHEAN: Nothing to do
12 with the feds?

13 MR. GIFFORD: Exactly.

14 HEARING OFFICER SHEAN: Anything from
15 the Applicant?

16 MS. MOORE: Can I --

17 MS. LUCKHARDT: Mr. -- sorry, go ahead.

18 MS. MOORE: Have you guys written any
19 letters regarding mitigation or accuracy? Is
20 there a written record from Fish and Game where
21 you've provided your guys' comments?

22 MR. GIFFORD: On this project?

23 MS. MOORE: Yes.

24 MR. GIFFORD: Yes. Starting with the
25 notice of preparation of the AFC. Yes, we have

1 commented on the draft AFC, also provided comments
2 on the BRA, and as time went by, at the request of
3 staff, we've provided comment on various
4 materials.

5 MS. MOORE: Did some of those comments
6 address mitigation also, what would be appropriate
7 mitigation, and things like that?

8 MR. GIFFORD: Actually what we try and
9 do is -- hopefully, the CEQA document mirrors what
10 we're going to ask for in the 2081, and so mostly
11 we're looking for full disclosure of impacts in
12 the CEQA document and we'll actually tie up the
13 loose ends in the 2081 permit, as far as
14 mitigation goes.

15 HEARING OFFICER SHEAN: Do you inter-
16 relate to the analysis being performed by the
17 feds, in terms of what you call loose ends? Would
18 their loose ends and your loose ends and our loose
19 ends all be the same, in your estimation?

20 MR. GIFFORD: Actually, in looking at
21 out 2081 permit for the giant garter snake, a dual
22 covered species -- it's both federally listed and
23 state listed -- yes, I look at what the federal
24 government is doing and try to, you know, I would
25 hate to have disparate requirements for

1 mitigation. Yes, there's some coordination.

2 HEARING OFFICER SHEAN: Okay. Did
3 you -- ?

4 MS. LUCKHARDT: I just have a couple
5 questions. Mr. Gifford, are you aware of whether
6 the conservation resources bank that we've been
7 discussing is a CDFG-approved bank?

8 MR. GIFFORD: I should probably know
9 that, but I don't.

10 MS. DAVIS: It's Chris Vrame and Dave
11 Martinez's bank. Are you familiar with that one,
12 on the Mehrten's property?

13 MR. GIFFORD: We were just discussing
14 this. I'm sure it's a federally approved bank,
15 but I actually don't know about Fish and Game's
16 approval status for species on that bank.

17 MS. LUCKHARDT: Okay, does that also
18 mean, or are you aware, whether Swainson's hawk
19 mitigation at that location has been approved in
20 the past?

21 MR. GIFFORD: I don't know the answer to
22 that question, either.

23 MS. LUCKHARDT: Do you anticipate Fish
24 and Game having concerns about either the
25 Swainson's hawk mitigation that's been proposed or

1 the giant garter snake mitigation that's been
2 proposed?

3 MR. GIFFORD: We've looked over the
4 giant garter snake mitigation contained both in
5 our draft permit and as it's contained in the BRA,
6 and it looks appropriate. I don't think that will
7 have any problem in our permit.

8 The Swainson's hawk is a little more
9 problematic in that we've shifted gears.
10 Originally, I think we were close to approval of
11 the onsite mitigation, and then switching to the
12 mitigation bank makes it more problematic.

13 MS. LUCKHARDT: In that it hasn't been
14 reviewed to this point?

15 MR. GIFFORD: Yes, I'd like to actually
16 not talk about that a lot until I talk about it
17 with our regional staff, I don't know the status
18 of the appropriateness of mitigating at that bank,
19 and I'd like to determine that.

20 MS. LUCKHARDT: Okay. So you're not
21 aware of it?

22 MR. GIFFORD: No.

23 HEARING OFFICER SHEAN: Anything from
24 anybody else before we ask our federal guest what
25 he knows? Okay, thank you, Mr. Gifford,

1 appreciate it.

2 MR. GIFFORD: Thank you.

3 HEARING OFFICER SHEAN: Yes, sir. Can
4 we put you on the semi-hot seat here for a minute?

5 MR. FULLER: Most folks do. My name's
6 Ken Fuller. I'm one of the three staff biologists
7 at the Sacramento Valley branch of Endangered
8 Species Division of the Sacramento Fish and
9 Wildlife Office.

10 And I, along with Craig Aubray of our
11 staff, have been involved in discussions regarding
12 minimization and avoidance of effects to wetland
13 species, including giant garter snake and vernal
14 pool crustaceans, for some time now.

15 HEARING OFFICER SHEAN: And what do you
16 understand to be the status of what's before you,
17 that would help us understand where we are in the
18 process?

19 MR. FULLER: Where we are in the
20 process. Normally, we're -- for those folks who
21 don't know the process that Fish and Wildlife is
22 engaged in -- we consult with the Corps of
23 Engineers and they are the lead federal agency,
24 and our consultation is with them.

25 In that process, of course, we have made

1 some communications with them, as well as with
2 Fish and Game and the staff of CEC regarding
3 avoidance and minimization to federal trustee
4 species that are at issue here. We are early in
5 the consultation process with the Corps of
6 Engineers.

7 HEARING OFFICER SHEAN: And, can you, I
8 guess, help us -- since you're consulting with
9 them as the lead -- what, can you describe the
10 steps in their process?

11 MR. FULLER: Without stepping on the
12 Corps toes --

13 HEARING OFFICER SHEAN: Well, they're
14 not here, so --

15 MR. FULLER: Some people would like to
16 dance on the Corps toes, but -- you didn't hear
17 that. Normally, in the consultation process with
18 the Corps of Engineers they usually initiate a
19 formal consultation via letter, which they have,
20 with us.

21 And that starts the 135 day clock, upon
22 our receipt of their letter. Generally, in that
23 process they publish a public notice, and hold
24 open at least a 30 day comment period for that, to
25 take comments from all concerned citizens. They

1 take those comments into their consideration for
2 permit conditioning.

3 Normally in that process we have a group
4 of people in our wetlands division which make
5 comments under the Coordination Act Report. And a
6 letter is provided to them for guiding the Corps
7 in their permit conditioning, in addition to a
8 Biological Opinion, which they'll eventually get
9 as well.

10 HEARING OFFICER SHEAN: All of this
11 leading to the Biological Opinion?

12 MR. FULLER: Yes, that's correct.

13 HEARING OFFICER SHEAN: And then that
14 ultimately leads to their permit?

15 MR. FULLER: Yes, the Corps issuing a
16 permit.

17 HEARING OFFICER SHEAN: The Corps
18 permit?

19 MR. FULLER: That's correct.

20 HEARING OFFICER SHEAN: So, would it be
21 correct to understand -- about that process with
22 respect to the public comment period which you say
23 is approximately 30 days -- that, for example, if
24 there were disputes about whether or not -- as was
25 being asked and answered here earlier -- a

1 particular --.

2 If a jurisdictional vernal pond were at
3 issue with respect to the construction corridor,
4 and whether it should or should not be included in
5 what ultimately would be the amount of mitigation,
6 that that would be something that this process
7 would address from a federal perspective?

8 MR. FULLER: It most certainly is.

9 HEARING OFFICER SHEAN: Okay. And, in
10 terms of these jurisdictional wetlands and waters
11 of the United States, it is the federal government
12 that has sole and exclusive jurisdiction as to
13 those, is that also correct?

14 MR. FULLER: To the extent that they are
15 covered under the nationwide permits, yes.

16 HEARING OFFICER SHEAN: And is a 404
17 permit such a permit?

18 MR. FULLER: Yes, it is.

19 HEARING OFFICER SHEAN: Okay. And, as
20 far as you know, it is the position of the federal
21 government that no construction on this process
22 can commence until that permit is granted?

23 MR. FULLER: That's correct. Of course,
24 there is a number of people who don't bother to
25 get permits, and they find themselves in some

1 trouble.

2 HEARING OFFICER SHEAN: Okay.

3 Anything --?

4 MS. HOLMES: Can I ask a question?

5 HEARING OFFICER SHEAN: Yes, go ahead.

6 MS. HOLMES: Earlier this afternoon
7 somebody -- I think it may have been Dr. Huffman
8 -- indicated that the Biological Opinion was going
9 to be issued relatively quickly. It's my
10 understanding that the 135 days runs out about the
11 first week of August, is that correct?

12 MR. FULLER: I didn't bring my calendar
13 with me, but I'll take your word for it.

14 MS. HOLMES: Do you know whether or not
15 the Biological Opinion is likely to be issued
16 prior to the 135 days?

17 MR. FULLER: It's likely to be issued
18 sooner than 135 days, yes, that's correct.

19 MS. HOLMES: And do you have a sense of
20 how much sooner, or not?

21 MR. FULLER: I'm sorry, I didn't bring
22 my crystal ball with me.

23 MS. HOLMES: Okay, thank you.

24 HEARING OFFICER SHEAN: But has that
25 public comment period occurred yet? Apparently

1 not, if I understand correctly. Whatever this
2 public notice is, it has not been issued yet?

3 MR. FULLER: That's correct.

4 MS. LUCKHARDT: Do we have a little
5 confusion between the public notice for the 404,
6 and a public comment period on a Biological
7 Opinion? Can you clarify, Mr. Fuller, whether
8 there is a 30 day comment period on the Biological
9 Opinion?

10 MR. FULLER: Ms. Luckhardt, yes, I can.
11 The public comment period is open for the Corps
12 permit, there's no public comment period for a
13 Biological Opinion.

14 MS. LUCKHARDT: Thank you.

15 HEARING OFFICER SHEAN: Any other
16 questions?

17 MS. MOORE: I just want to ask Mr.
18 Fuller, what's your guy's sort of average times
19 these days for getting a section 7 wrapped up?

20 MR. FULLER: An average time, that's a
21 very interesting question. I would suppose that
22 assessment and determination would be whether or
23 not that baseball grenade had a pin in it that was
24 rolling down the hallway. It's impossible for me
25 to say.

1 I do know that -- well, just for the
2 committee's edification -- there's two kinds of
3 Biological Opinions. One with the Corps of
4 Engineers under our programmatic Biological
5 Opinion. Generally we can issue an amendment to
6 that Biological Opinion in a relatively short
7 order, 30 to 40 days under optimal conditions.

8 But this project, because of the
9 magnitude of the effects to federal trustee
10 resources, we need to write and analyze a full
11 Biological Opinion, which takes generally much
12 longer. Not usually four or five times longer,
13 but some amount longer.

14 MS. MOORE: Your office has a few
15 section 7's they've been working on for more than
16 a year or two, correct?

17 MR. FULLER: Yes, that's correct.

18 HEARING OFFICER SHEAN: Anything else?

19 MS. LUCKHARDT: I have a couple of
20 questions. Mr. Fuller, have you evaluated the
21 impacts from this project in your reviews of the
22 biological assessment?

23 MR. FULLER: No, we're just starting
24 that review process. In terms of this biological
25 assessment?

1 MS. LUCKHARDT: Yes.

2 MR. FULLER: We haven't gone pool by
3 pool by pool, no, if that's the question.

4 MS. LUCKHARDT: Have you had a chance to
5 review the currently proposed mitigation for this
6 project, the Wildlands bank and the --

7 MR. FULLER: Yes. Craig Aubray has
8 given, as well as Justin Ly, who is my immediate
9 supervisor, tentative approval for the
10 conservation that Wildlands has proposed at the --
11 for the lack of a better term for it -- stone
12 lakes' approximate location.

13 MS. LUCKHARDT: And the conservation
14 resources bank for preservation, is that something
15 to your understanding that is generally acceptable
16 to the service?

17 MR. FULLER: Yes, it is.

18 MS. LUCKHARDT: And I understand there
19 is some question about whether it would be
20 acceptable to the Service to have conservation
21 resources provide the creation component, is the
22 Wildlands Sheridan bank generally accepted to the
23 Service for creation?

24 MR. FULLER: Yes, it is.

25 MS. LUCKHARDT: So then, summing it up,

1 generally that proposed mitigation package is
2 generally acceptable to the Service for this
3 project?

4 MR. FULLER: Yes, in principle it is.

5 HEARING OFFICER SHEAN: So are we then
6 left with essentially an accounting process to get
7 what the numbers are, in terms of either the
8 onsite bank or any type of other compensatory
9 mitigation?

10 MR. FULLER: Yes, that's correct.

11 HEARING OFFICER SHEAN: Is that the
12 essential remaining task?

13 MR. FULLER: That's correct.

14 HEARING OFFICER SHEAN: So -- in terms
15 of understanding conceptually -- the mitigation
16 that has to be taken place as these things are
17 constructed, the mitigation that would, for the
18 compensatory program, those things seem to be all
19 right at this point, if I understood what you just
20 said, is that correct?

21 MR. FULLER: Yes, we've offered SMUD
22 basically three options for compensation affects
23 to federally trusteed resources. One, to do most
24 of it onsite, some onsite and some offsite, and
25 all offsite.

1 HEARING OFFICER SHEAN: Other than
2 finishing this accounting, is there any other
3 element of mitigation, in so far as the Fish and
4 Wildlife Service is concerned, is missing?

5 MR. FULLER: No, the assessment and
6 determination of effects to federally trusteed
7 species are well done, in terms of the species
8 that are at issue.

9 HEARING OFFICER SHEAN: So, at most,
10 we're moving a few of these numbers back or forth,
11 is that --

12 MR. FULLER: Yeah, give or take an acre
13 one way or another.

14 HEARING OFFICER SHEAN: Okay. And we've
15 done this for six hours to get to that point?
16 Okay.

17 MR. FULLER: It's a long road.

18 HEARING OFFICER SHEAN: Yeah, all right.

19 MS. LUCKHARDT: Mr. Shean, can I ask one
20 additional question?

21 HEARING OFFICER SHEAN: Yes.

22 MS. LUCKHARDT: Mr. Fuller, in your
23 opinion, is Mr. Jennings qualified to conduct
24 California tiger salamander surveys?

25 MR. FULLER: Yes, he is.

1 HEARING OFFICER SHEAN: Okay. We snuck
2 that in. All right. Did you want to --

3 MS. HOLMES: I just wanted to ask one
4 question, because it relates back to something
5 that was addressed earlier. Can you explain what
6 the role of the Service is in reviewing management
7 plans and when that review process is usually
8 completed?

9 MR. FULLER: The role of the Service in
10 reviewing management plans would be for non-bank,
11 non-Service approved conservation bank areas that
12 are often referred to as turnkey banks.

13 For those folks who don't know, a
14 turnkey bank is a conservation area that's set up
15 specifically for one project that's not going to
16 engage in public sales of conservation credits or
17 units. We do get into reviewing and approving
18 draft management plans for those areas for that
19 individual as well as guilds of species.

20 MS. HOLMES: So, for example with
21 respect to the giant garter snake proposal that's
22 been made by SMUD for this project, is that an
23 example of a situation where the Fish and Wildlife
24 Service would independently or separately approve
25 the management plan for that species?

1 MR. FULLER: Yes, we would.

2 MS. HOLMES: And can you explain how
3 that's going to happen in this process?

4 MR. FULLER: Probably fairly easily,
5 being that Wildlands did already go through the
6 effort of authoring a draft and finally working
7 through approval for other giant garter snake
8 conservation banks in other areas. I would
9 foresee that it would be pretty smooth and easy
10 sailing to do the same thing for what's proposed
11 for this project.

12 MS. HOLMES: And does the Service
13 require that the management plan approval precede
14 the issuance of the Biological Opinion, or can it
15 follow it?

16 MR. FULLER: We have gone both ways,
17 historically. It's essentially a question of
18 timing. Oftentimes we are already in the review
19 process prior to the issuance of the Biological
20 Opinion, the finalization of that occurs shortly
21 after the Corps gets the Biological Opinion.

22 MS. HOLMES: Thank you.

23 MR. ROSKEY: Could I ask a question,
24 please?

25 HEARING OFFICER SHEAN: Sure.

1 MR. ROSKEY: Mr. Fuller, this is off the
2 record so I feel that I have a bit of latitude in
3 my question?

4 HEARING OFFICER SHEAN: Well, it's
5 certainly not off the record.

6 MR. ROSKEY: Well, not sworn, excuse me.
7 Doesn't an easement already, or any kind of
8 mitigating set aside of land, doesn't that set
9 aside a habitat that's already there? It's just
10 sort of a protection for habitat that's already
11 there, except in the case of creation? Am I
12 understanding that correctly?

13 MR. FULLER: We would view that somewhat
14 differently.

15 MR. ROSKEY: Could you explain, please?

16 MR. FULLER: The purpose and intention
17 of a conservation easement placed over extant
18 habitat ensures, in perpetuity, that that habitat
19 remains as habitat, in perpetuity.

20 MR. ROSKEY: But it doesn't become
21 habitat, it's already habitat, isn't it?

22 MR. FULLER: Yes. That's the point of
23 the conservation easement.

24 MR. ROSKEY: But my point is different.
25 My point is that the habitat exists, we're already

1 -- what we're proposing is to destroy habitat that
2 also exists, isn't that correct? So what have we
3 gained?

4 HEARING OFFICER SHEAN: Well, that's
5 fundamentally -- in legal terms, argumentative.
6 He's already indicated what he thinks they've
7 gained is that habitat in perpetuity. And the
8 perpetuity element is the chief benefit, is that
9 correct?

10 MR. FULLER: That's correct.

11 HEARING OFFICER SHEAN: All right.
12 Gentlemen, we'd like to thank you. It's been very
13 helpful, and --

14 COMMISSIONER PERNELL: Thank you, and
15 the committee apologizes for the wait. It looks
16 like we're going to be here for awhile.

17 HEARING OFFICER SHEAN: All right. Why
18 don't we forge on before we take an afternoon
19 break here, with the remaining cross-examination
20 by Mr. Roskey on biology, if you have any?

21 MR. ROSKEY: Now?

22 HEARING OFFICER SHEAN: Now.

23 MR. ROSKEY: I just have a couple of
24 questions that sort of occurred to me as we were
25 going through the testimony. Actually, they're on

1 one specific point.

2 Mr. Koford brought up the fact that, in
3 the application for certification, there is a
4 discussion of the effects of air pollution
5 emissions -- I should say from the proposed
6 plant -- on wildlife in the area. And so I asked
7 staff and obtained a copy of the section he
8 referred to, 8.2. And asked him to point out
9 where that is located.

10 I think the question that Mr. Sarvey
11 originally asked was -- at least this is how he
12 expressed it to me, I don't know if he expressed
13 it on the record -- the NOX, what would be the
14 effects of NOX emissions on specifically on
15 aquatic species, but, you know, even just in the
16 air on terrestrial species?

17 And I don't see that specific issue
18 addressed here. I would refer you to 8.2-12, and
19 I think what it refers to here is total dissolved
20 solids, am I correct about that, and salts?

21 I'd like to ask the Applicant concerning
22 that question, and their experts, what about NOX
23 emissions and SOX emissions, and PM 2.5 and PM 10
24 emissions? How is the effect of that assessed,
25 and is it assessed, on biology in the area?

1 MR. KOFORD: The question that was
2 asked, just to refresh your memory, was where are
3 power plant emissions addressed? I understand
4 that you've now asked about NOX and PM 2.5.

5 In doing our biological analysis, we
6 start out by looking at the available record, and
7 then consulting all the appropriate agencies for
8 their concerns, and working with staff to identify
9 their concerns. And from that we develop our
10 analysis.

11 From the initiation of this project in
12 June, 2001, we met or corresponded with the Fish
13 and Wildlife Service 20 times, we met with Fish
14 and Game probably 10 times, we've consulted --
15 both in person and by letter -- with the National
16 Marine Fishery Service.

17 We've met with the Nature Conservancy,
18 we've met with the staff of the Energy Commission,
19 we've held three biological workshops, and we have
20 never been asked what the impacts of NOX are in
21 the local vegetation.

22 Had we been asked at that early time we
23 would have provided analysis in the AFC, but there
24 is not analysis in the AFC of NOX impacts or PM
25 2.5 impacts on the local habitat.

1 MR. ROSKEY: Is is correct then to
2 summarize your response by saying that no analyses
3 have been performed on those issues?

4 MR. KOFORD: No, that is not correct.
5 As I said, the analysis consists of consulting
6 with the agencies to identify and scope the range
7 of the problem, identify issues, and determine
8 impacts therefrom.

9 For example, during the process Fish and
10 Game brought up the issue of particular species
11 that should be evaluated, CEC staff said we should
12 have surveys for burrowing owl and fairy shrimp,
13 and the Applicant responded appropriately to those
14 concerns. Had that question been raised, we would
15 have responded similarly.

16 MR. ROSKEY: And it wasn't raised, is
17 that what you're saying, that it wasn't raised?

18 MS. LUCKHARDT: I believe that's been
19 asked and answered.

20 MR. ROSKEY: But he has avoided saying
21 that there is no analysis?

22 MS. LUCKHARDT: I believe that he has a
23 right to explain his testimony as he sees fit.

24 MR. ROSKEY: Could I ask one further
25 question. Is it a possibility that nitrogen

1 concentration and sulphur concentration could
2 result from emissions in vernal pools in the area?

3 MR. KOFORD: I wouldn't speculate on
4 that.

5 MR. ROSKEY: Okay, well, I'm amazed that
6 we're doing an environmental impact --

7 MS. LUCKHARDT: Are we testifying or are
8 we asking questions?

9 MR. ROSKEY: I'll reserve that for my
10 public comment.

11 HEARING OFFICER SHEAN: Let me just
12 inform you, Mr. Roskey, as the Commission looks at
13 the entirety of the record, the testimony that
14 you've just elicited from the Applicant is that
15 they did not perform this study for the
16 application for certification.

17 And assuming that they have not done
18 that, the question then is, does the record
19 contain that information in any other place? And
20 although we have not yet gotten to the staff
21 witness, I would just point to the staff testimony
22 on page 4.2-25, in which the staff -- because I
23 know what they do routinely -- does such an
24 evaluation of air quality impact, air emission
25 impacts upon biological resources.

1 So, if you have questions you want to
2 direct to that particular topic, it seems like the
3 well is pretty dry over here with the Applicant,
4 and the staff has at least done whatever analysis
5 they have done.

6 So if you want to address it -- but let
7 me just indicate that, for the purposes of the
8 record, we don't care where the information comes
9 from. It could accidentally come from an
10 Intervenor who was opposed to the project and just
11 happened to ask the question in a way that
12 provides the answer that supports the decision.

13 It does not matter to the Commission
14 where the information comes from, and in this case
15 there is something in the staff testimony.

16 MR. ROSKEY: Thank you.

17 HEARING OFFICER SHEAN: Just so you're
18 aware of what the overall setup is.

19 MR. ROSKEY: Yes, sir. I stand
20 corrected. May I also ask another question,
21 please?

22 HEARING OFFICER SHEAN: Okay. And I
23 wasn't attempting to correct you, but to inform
24 you.

25 MR. ROSKEY: Okay. What about noise and

1 vibration, was there any consideration of the
2 effects on wildlife in the area?

3 MR. KOFORD: I tell you, we'd certainly
4 have considered it had we thought there was a
5 sensitive species approximate to the area, we
6 would have mentioned it.

7 Along the pipeline there is a specific
8 concern that was raised by the CEC staff for
9 noise. We evaluated and I think we've determined
10 that we don't feel there are significant impacts
11 there.

12 MR. ROSKEY: And as far as plant
13 operation, you didn't identify any issue there?

14 MR. KOFORD: That's correct.

15 MR. ROSKEY: And may I ask one further
16 question concerning lighting. Did you identify
17 any issue as far as that's concerned, as far as it
18 affecting wildlife in proximity to the proposed
19 plant?

20 MR. KOFORD: I did not. I know it's a
21 concern of staff's, so you might redirect that
22 question.

23 MR. ROSKEY: Thank you.

24 HEARING OFFICER SHEAN: Thank you. Do
25 you have any redirect?

1 MS. LUCKHARDT: Just a couple. It'll
2 actually be short, which I know everyone will
3 appreciate. Dr. Huffman, in your response to Ms.
4 Moore you discussed breakdowns in additional
5 information you were providing to the Corps. Will
6 any of that information -- do you anticipate that
7 any of that information will change the ultimate
8 impacts that you have provided on Exhibit 6?

9 MR. HUFFMAN: No, I believe it won't.

10 MS. LUCKHARDT: In addition, Mr.
11 Huffman, do you expect the 404 process for this
12 case to change the location of the project or any
13 of the project features?

14 MR. HUFFMAN: As far as the location,
15 no. As far as the project features, the overall
16 features, no. There might be some minimal
17 tweaking of areas for some small amount of
18 avoidance, but overall it stays the same.

19 MS. LUCKHARDT: And Ms. Crowe, in your
20 experience, is the BRMIMP typically updated during
21 construction or post-certification?

22 MS. CROWE: It's typically updated with
23 conditions from permits that are received from the
24 Army Corps, Fish and Wildlife Service, Fish and
25 Game, and any other agencies. It's a working

1 document, it does get updated periodically.

2 MS. LUCKHARDT: Mr. Koford, in your
3 experience with working with nitrogen deposition
4 on other projects, would you anticipate concerns
5 or impacts to biological species from nitrogen in
6 this case?

7 MR. KOFORD: No, I wouldn't.

8 MS. LUCKHARDT: And Mr. Koford, could
9 you take a moment and look at the construction
10 drawings and see if you can confirm whether the
11 vernal pool that you had previously discussed is
12 being avoided by HDD?

13 MR. KOFORD: VP 86, is that the one that
14 we're talking about?

15 MS. LUCKHARDT: Yes.

16 MR. KOFORD: I did take a look at the
17 construction drawings during the break, and
18 there's a bore there, and the bore is going past
19 the vernal pool coming up on the opposite side.
20 So the detailed drawing shows avoidance of that
21 vernal pool.

22 MS. LUCKHARDT: Thank you, I have
23 nothing further.

24 HEARING OFFICER SHEAN: Thank you. Let
25 me just ask, I think it's Dr. Huffman -- to the

1 extent we had comments there from Mr. Fuller, do
2 you concur with his general characterization that
3 the matters of construction mitigation and the
4 conditions for that have been pretty well
5 outlined?

6 MR. HUFFMAN: Yes.

7 HEARING OFFICER SHEAN: And that the
8 establishment conceptually of the compensatory
9 mitigation has been largely accepted?

10 MR. HUFFMAN: Yes.

11 HEARING OFFICER SHEAN: And that we're
12 basically down now to an accounting process with
13 the feds in terms of the adequacy of that
14 compensatory mitigation?

15 MR. HUFFMAN: Yes.

16 HEARING OFFICER SHEAN: And that
17 fundamentally the discussion here about whether or
18 not a particular element of construction will or
19 will not impact, let's say, jurisdictional vernal
20 pond, or any other waters of the United States --
21 if during the public comment period let's say Ms.
22 Moore or somebody else convinces the feds that you
23 need to add a tenth or whatever, that that is
24 fundamentally, is that, in your opinion, all
25 that's left for the feds?

1 MR. HUFFMAN: Yes. Often in the public
2 comment period -- or even responsible Applicants,
3 including SMUD, I believe them to be very
4 responsible -- even when they get a permit, and
5 they have all these conditions, they may be in the
6 field and they may figure out a way to reduce
7 impacts even further, maybe by moving the pipeline
8 slightly or whatever, that they didn't realize
9 when they did their design, so the answer is yes.

10 HEARING OFFICER SHEAN: So, does that
11 concept work both ways?

12 MR. HUFFMAN: Yes.

13 HEARING OFFICER SHEAN: I mean, if it
14 can come to you can it go away from you, in terms
15 of you get there and you say "we can't avoid this
16 as we thought we could, and therefore this needs
17 to be added so that ultimately the mitigation bank
18 is increased?"

19 MR. HUFFMAN: Yes. Hopefully, through
20 careful analysis of impacts and design techniques
21 and details, you know, you're very close but --
22 I've also seen Applicants that say "oh, we need an
23 extra hundredth of an acre of impact" and that's
24 considered a minor modification of a permit.
25 Again, it's an accounting issue more than

1 anything.

2 HEARING OFFICER SHEAN: Do you have any
3 re-cross? You can ask any questions that you have
4 based upon the answers that were elicited in the
5 questions by Ms. Luckhardt. You can think about
6 it for a minute.

7 MS. MOORE: I've just got a couple of
8 questions. Dr. Huffman, you indicated you
9 expected the bio-opinion shortly, and Mr. Fuller
10 indicated they were early in the process of
11 getting it out. Have you interfaced with Fish and
12 Wildlife Service on this consultation at all?

13 MR. HUFFMAN: Not directly. I've done
14 that through Ms. Luckhardt and the people from
15 CH2M Hill.

16 HEARING OFFICER SHEAN: And let me just
17 state for the record, since I wrote it down, he
18 used the words "several months," so -- and I don't
19 think you characterized it in that way. The
20 record, as I understand the way the doctor had
21 answered it, was several months.

22 MS. MOORE: I believe he was also
23 referring to the wetlands 404 permit.

24 HEARING OFFICER SHEAN: After the
25 Biological Opinion. So if you're talking about

1 the Biological Opinion itself I do not have that.

2 MS. MOORE: Okay, I've got one more
3 question for Dr. Huffman. When you're talking
4 about the 404B1 alternatives analysis resulting in
5 the project being in the same location, but you've
6 talked about minor tweaking, could you explain
7 what you're thinking of might get tweaked?

8 MR. HUFFMAN: There may be something
9 about the pipeline alignment that some engineer
10 has not thought about that might result in less
11 impact. It might be a way that they could bend
12 the pipeline slightly to further actually avoid
13 direct impacts.

14 It could be related to the way that they
15 design their bypass channels or any other
16 engineering features. You know, it's one thing to
17 put things on paper, and stake it out and look at
18 it and think about it.

19 But when you get out and you actually
20 are doing the construction, you can see ways to
21 actually lessen impacts. So that's what I mean by
22 minor tweaking.

23 MS. MOORE: Have you received any
24 feedback from the Corps on the alternatives
25 analysis yet?

1 MR. HUFFMAN: Not yet.

2 MS. MOORE: Do you usually have more
3 than one iteration of a document like that?

4 MS. LUCKHARDT: I believe this is beyond
5 the recross/redirect at this point.

6 HEARING OFFICER SHEAN: I'll let him
7 answer it.

8 MR. HUFFMAN: You can, yes.

9 MS. MOORE: Regarding this wetland that
10 we've been calling vernal pool 86, apparently the
11 documents I have showed a pipeline going through
12 it, the documents that I don't have show it being
13 avoided through -- what would they do, a boring
14 jack or HDD?

15 MR. KOFORD: Jack and bore.

16 MS. MOORE: Jack and bore. Is that --
17 that'll go below the pool?

18 MR. HUFFMAN: Yes.

19 MS. MOORE: And how often, when you're
20 doing operations like horizontal directional
21 drilling and boring and jacking, what percentage
22 of the time do you end up having some sort of a
23 rupture to the surface or collapse of the pipeline
24 that actually results in areas that you thought
25 were going to be avoided? Just about what

1 percentage?

2 MS. LUCKHARDT: I believe this, again,
3 is beyond the redirect.

4 HEARING OFFICER SHEAN: I'll allow you
5 this one extra question, so go ahead.

6 MR. HUFFMAN: If the material is porous,
7 or if it's a rock structure with a lot of
8 fractures, you know, you can expect frac-outs.

9 But that's why you have a BRMIMP,
10 there's contingency plans for boring to take
11 precautions so that they can get in and protect
12 areas, if there is a frac-out. In areas where
13 there's heavy soils, like clays and hard pan, it's
14 less likely to occur.

15 But again, there are precautions that
16 are taken in case there were to be a frac-out.
17 But nevertheless, there's also this particular
18 pool.

19 Although we don't count it as a direct
20 impact, we count it as an indirect impact for the
21 Fish and Wildlife Service's accounting purposes,
22 so there is, you know, full and complete
23 mitigation in terms of preservation as well as
24 creation at an offsite bank. Although we expect
25 the pool to remain as is.

1 MS. MOORE: So, in your permit
2 application do you have to address potential
3 impacts to each wetland that gets bored and jacked
4 under, because the potential for frac-out is, you
5 know, it's not just a small percentage.

6 Do you address that in the permit so
7 that if the event happens and fill ends up being
8 in the pool it's an authorized activity?

9 MR. HUFFMAN: It's a way to look at it,
10 yes. If a frac-out occurs -- now, you're talking
11 the core permit process at this point?

12 MS. MOORE: Yes.

13 MR. HUFFMAN: Well, it's not counted as
14 a direct impact in the Corps process, but if a
15 frac-out were to occur -- this is after the permit
16 has been issued, and you're following the
17 conditions of the permit -- the Corps is going to
18 seek to have restoration occur.

19 If it's determined that restoration is
20 not practicable for some reason related to the
21 frac-out incident, then the Corps would seek
22 mitigation to offset that impact, and likely that
23 would be through the same type of mitigation
24 banking process that SMUD is seeking now. But
25 there will be a mechanism if that were to occur to

1 correct that.

2 MS. MOORE: Would you have to get a
3 separate after-the-fact permit approval for that
4 type of a thing, or is it something that you would
5 roll in to your existing 404 permit?

6 MR. HUFFMAN: It's not likely that it
7 would be covered by the existing permit.

8 MS. MOORE: So you would possibly be
9 looking at resolving it through an after-the-fact
10 permit where it would work on the mitigation that
11 would be appropriate to --

12 MR. HUFFMAN: Well, it wouldn't be an
13 after-the-fact permit. It would just be that a
14 condition was not complied with, and corrective
15 actions have to be taken under the existing
16 permit.

17 MS. MOORE: Thank you.

18 HEARING OFFICER SHEAN: Thank you.
19 Hallelujah, I believe -- what, I know, we have
20 public comment. But at least as to this panel,
21 thank you very much. Let's see, why don't we go
22 ahead and take that, and then we'll take our
23 break.

24 MR. BOYD: Mike Boyd, president of CARE.
25 And I have three basic comments. The first being

1 the issue of bifurcation. The issue of
2 bifurcation first came up for us in the Metcalf
3 Energy Center Project.

4 Another term for bifurcation is called
5 piecemealing. And what we're talking about is, my
6 understanding is that it's strongly forbidden by
7 CEQA, is that you piecemeal the environmental
8 review process. The reason being to -- if you
9 examine impacts in a piecemeal process, considered
10 by themselves an impact may seem insignificant,
11 but considered in a whole, in a complete process,
12 would be significant when taken into consideration
13 the effects in other areas.

14 Like for example, air emissions. So,
15 CARE believes that it's illegal for you to
16 bifurcate a process like this, because it
17 precludes complete environmental review. For
18 example, the gentleman from the state Fish and
19 Wildlife Service said that they predicated their
20 decision on a certified environmental document.

21 You won't have a certified environmental
22 document until the final decision is issued and 30
23 days has elapsed. So how is it possible for them
24 to have a complete and adequate review to prepare
25 their analysis when you don't have a certified

1 document yet?

2 Another example of this is in the PSD
3 permit for the project, the Prevention of
4 Significant Degradation permit, and the authority
5 to construct permit requires the EPA, which has
6 the authority for the PSD permit, have a completed
7 Biological Opinion.

8 You don't have a Biological Opinion yet,
9 it doesn't even sound like your close to a
10 Biological Opinion yet, yet we're having
11 evidentiary hearings today on a biological
12 resources in the absence of a Biological Opinion,
13 which is going to be followed by a hearing on air
14 quality which doesn't have a Biological Opinion
15 yet.

16 So how can we assess the impact of air
17 emissions from the project without the analysis
18 being done? So that's the problem with
19 piecemealing the process is, it creates a
20 situation where we, as the public, cannot be
21 meaningfully informed, we can't meaningfully
22 participate unless we have all the information
23 first.

24 We don't have that information because
25 it hasn't been created yet. So that creates a

1 procedural problem with the process that we're in
2 right now. You're having evidentiary hearings on
3 parts of the project where the analysis isn't yet
4 complete. And that's clear from the evidence in
5 the record today.

6 Now the other issue that I would like to
7 comment about is the summary of special status
8 habitat compensation provided by the Applicant. I
9 took a few minutes to talk to CARE's biologist,
10 Dr. Smallwood, about what some of this proposed
11 mitigation is, and I offer up a few of his
12 comments that he presented to me.

13 First, on the giant garter snake aquatic
14 and upland habitat, where you're proposing the
15 majority of the mitigation, which is 41.5 acres.
16 When I read the biological resources information I
17 did not see anything about the loss of habitat due
18 to the reduction of the surface waters that may
19 result from the water use from this project. How
20 many acres of giant garter snake habitat will be
21 lost to reduce surface water?

22 And let's talk about vernal pools. In
23 here I see you're proposing to create three acres
24 of vernal pools. What guarantee is there that
25 that will work, that you'll be able to create

1 three acres of vernal pools?

2 I personally was involved in -- the
3 first vernal pool creation project in the state
4 was in Santa Barbara county, and I was involved in
5 that. It's not a real simple thing, it's not
6 guaranteed that you're going to get three acres
7 created.

8 And that goes to what's called the
9 biological resource mitigation implementation and
10 monitoring plan, BR -- I can't even say it, it's
11 too much of an acronym. You have to have a plan
12 that takes into consideration the contingency that
13 this doesn't work. What if it doesn't work, are
14 they going to propose another three acres of
15 preservation somewhere else? That's not offered
16 up.

17 Let's talk about the California tiger
18 salamander. One of the witnesses said that that
19 was a big concern to SMUD, protecting the
20 salamander habitat. Yet this plan offers up no
21 acreage directly to mitigate the tiger salamander.
22 It says "included with vernal pool fairy shrimp
23 habitat."

24 So there is no direct mitigation for the
25 California tiger salamander that I see here. And

1 this sort of leads into the issue that he raised
2 about the depositions.

3 Now I've been before -- I was before you
4 in the East Altamount Center, and Dr. Smallwood
5 gave Commissioner Pernell a very sensitive
6 presentation on the impacts of emissions from
7 these types of projects on habitat and on
8 protected species.

9 He also mentioned specifically the tiger
10 salamander and the red-legged frog as those that
11 are very sensitive to NOX, sulphur oxides, some of
12 the toxic air contaminants from the project like
13 acrolein formaldehyde. All these things have an
14 effect on the tiger salamander.

15 We're not talking about the effect from
16 them building the project near or where the
17 habitat is. We're talking about the effect of the
18 deposition of air pollutants on the habitat.

19 So really, what should have been looked
20 at for deciding on what the habitat mitigation
21 should have been is they should have looked at the
22 zone of deposition from the project, they should
23 have looked at how much salamander habitat area
24 was within the zone of deposition, and then that
25 should have been used to determine the mitigation

1 ratio which they propose. This has proposed
2 nothing for the tiger salamander.

3 Then finally we come to the Swainson's
4 hawk. Oh, before I get off the tiger salamander.
5 Also, you proposed using Laguna Creek mitigation
6 bank. Dr. Smallwood told me he doesn't know of
7 any tiger salamander in that area, so he doesn't
8 see how that could be mitigation habitat.

9 Finally, Swainson's hawk foraging
10 habitat. You're offering up this same Laguna
11 Creek mitigation bank. Well, here we have a case
12 where there is in fact Swainson's hawk in that
13 habitat. But, as he mentioned earlier, what
14 mitigation is there. What CEQA mitigation is
15 there for the lost habitat from the project?

16 Their offering up existing habitat, but
17 they're not offering up any new habitat to
18 mitigate the impact on the Swainson's hawk.

19 And that leads me to my final point,
20 which is that the Applicant has failed -- I mean,
21 I recognize that the staff has made an attempt to
22 incorporate concerns for the deposition of
23 criteria pollutants in the staff assessment. The
24 Applicant has done nothing like that.

25 And this isn't the first time that this

1 has come up before you. It came up before you in
2 Metcalf over the the serpentine habitat, because
3 of nitrogen loading on the serpentine habitat.

4 My understanding is that's an issue also
5 with the vernal pools. The vernal pools -- if you
6 fertilize around the vernal pools it causes the
7 non-native grass species to move into the vernal
8 habitat and cause the loss of vernal habitat. So
9 there's other impacts that have been totally
10 ignored by Applicant.

11 And, as I said in my first comment, this
12 is a public agency we're talking about. They have
13 a higher standard to meet for the public, not a
14 lower standard. Thank you.

15 HEARING OFFICER SHEAN: Thank you.
16 Okay. Before we take our break, I think we should
17 give full credit to Bonnie, who not only sustains
18 us with nourishment, but enough caffeine to get
19 through all this, and we want to thank her very
20 much for having done that.

21 And so, we'll go off the record, and
22 take a little break here. Thank you, Bonnie.
23 (Off the record.)

24 HEARING OFFICER SHEAN: Back on the
25 record. Okay. We've talked to all the parties

1 about schedule. We're going to try to gut out
2 most of this.

3 Everyone has agreed to re-revise their
4 cross-examination to make sure it's only the most
5 probitive questions that are going to be asked.
6 And with that, we're going to go to the staff and
7 it's biology witness, who has been previously
8 sworn.

9 MS. HOLMES: Yes, she has. Ms. Dorin,
10 was the biological resources section of the SMUD
11 FSA prepared by you or under your direction?

12 MS. DORIN: Yes, it was.

13 MS. HOLMES: And did that document
14 include a statement of your qualifications?

15 MS. DORIN: Yes, it did.

16 MS. HOLMES: Do you have any changes or
17 corrections to your testimony?

18 MS. DORIN: I have just a couple of
19 changes.

20 MS. HOLMES: Why don't we go through
21 them one by one, and it would help if you could
22 give page numbers.

23 MS. DORIN: The first one is for Bio-
24 condition 20, it's giant garter snake habitat
25 compensation.

1 COMMISSIONER PERNELL: what page is
2 that?

3 MS. DORIN: It's on page 4-2, 57. And
4 actually is also says "minimum", and that was the
5 word that I was going to add, so no correction to
6 Bio-20. Bio-22, the acres in that condition
7 should reflect the acres that are in the
8 biological assessment, which is 19.7 preserved at
9 mitigation bank ratios, and 3.0 created. Also,
10 that should reflect that they are wetted acres.

11 MS. HOLMES: And with those changes, are
12 the facts contained in your testimony true and
13 correct?

14 MS. DORIN: They are.

15 MS. HOLMES: And do the opinions
16 contained in your testimony represent your best
17 professional judgment?

18 MS. DORIN: They do.

19 MS. HOLMES: And now I'd like to briefly
20 go to the items that were discussed on page 4.2-45
21 and 46 of your testimony. Those items are
22 informational in nature. Staff had asked for
23 several things to be filed prior to the hearings.
24 if you could just briefly state whether or not you
25 believe that the information that is necessary has

1 been provided, I would appreciate it?

2 MS. DORIN: I have received four of the
3 five items. The only outstanding item for me is I
4 would like confirmation from the Department of
5 Fish and Game on the acceptance of Swainson's hawk
6 mitigation habitat.

7 MS. HOLMES: So from your perspective
8 the issue with respect to the Swainson's hawk
9 issue will not be resolved until you receive some
10 sort of communication from Fish and Game
11 indicating its' acceptability?

12 MS. DORIN: Correct. And I could file a
13 record of communication to that degree.

14 MS. HOLMES: Thank you. And finally, I
15 have one quick question with respect to hydrologic
16 barriers. This issue was discussed earlier today.
17 There is a statement in the staff testimony saying
18 that vernal pool areas within 250 feet of the
19 vernal pools should be included. Do you recollect
20 that discussion?

21 HEARING OFFICER SHEAN: Before you ask
22 her the question about a document that's not in
23 evidence, why don't we ask if there is objection
24 to your qualifications to testify as an expert? I
25 don't hear any, you're qualified.

1 And is there objection to the admission
2 of the testimony of the witness? There is none.
3 Now you can answer the question.

4 MS. HOLMES: Do you recollect that
5 discussion?

6 MS. DORIN: I do.

7 MS. HOLMES: And can you please explain
8 what your understanding of the issue is?

9 MS. DORIN: To the degree that there was
10 a hydraulic barrier -- either a railroad track or
11 a road -- and it was designed to be on one side of
12 the road in order to avoid the impact of a vernal
13 pool or a wetted acre, then I did not include in
14 that situation the 250 feet. So it would be 250
15 feet if there was no hydraulic barrier to the
16 vernal pool.

17 MS. HOLMES: So, are you saying in
18 essence that you agree with the explanation that
19 was given by Mr. Koford earlier as to why those
20 areas were not included?

21 MS. DORIN: Yes, I do. Also, just one
22 housekeeping item. There is no Bio-21. That
23 numbering I skipped -- it's Bio-20, and then it
24 goes directly to Bio-22.

25 MS. HOLMES: You took the words out of

1 my mouth. Ms. Dorin has a summary prepared of her
2 testimony, but I think that in the interests of
3 moving this hearing along we'll skip it, unless
4 the committee feels that it would be helpful to
5 have.

6 HEARING OFFICER SHEAN: No, I think
7 everyone here is of reading age, and should have
8 done it. So we will move straight ahead. Do you
9 have any other thing you want to do on direct?

10 MS. HOLMES: No, we are now ready to
11 present the witness for cross.

12 HEARING OFFICER SHEAN: We'll go to the
13 Applicant, please?

14 MS. LUCKHARDT: A couple of questions.
15 Ms. Dorin, have you been in conversation with U.S.
16 Fish and Wildlife Service and Department of Fish
17 and Game in your evaluation of this project?

18 MS. DORIN: I have.

19 MS. LUCKHARDT: And does that include
20 telephone conversations, e-mails, and a variety of
21 other communication?

22 MS. DORIN: Yes.

23 MS. LUCKHARDT: And are you aware
24 whether the Conservation Resources Laguna Creek
25 mitigation bank is listed as an approved site for

1 California tiger salamander?

2 MS. DORIN: I have only seen the
3 management plan that says California tiger
4 salamander were found out there. I have not
5 verified that beyond that.

6 MS. LUCKHARDT: And does your analysis
7 contain a discussion of air quality impacts
8 related to biology?

9 MS. DORIN: It does.

10 MS. LUCKHARDT: And does your analysis
11 contain a discussion of noise impacts related to
12 biology?

13 MS. DORIN: It does.

14 MS. LUCKHARDT: Thank you, I have
15 nothing further.

16 HEARING OFFICER SHEAN: All right. Ms.
17 Peasha, Ms. Moore, anything?

18 MS. MOORE: I just wanted to know, in
19 this hydrologic analysis that you did of barriers,
20 how did you conduct the analysis? Did this
21 involve studying gradients, or -- I mean, some
22 roads out here are pretty thin, and I don't really
23 think they are a barrier. Did you analyze this by
24 subsurface testing of connectivity, of hydrology,
25 how did you do it?

1 MS. DORIN: No, I didn't. I actually
2 went through the aerial photos that were provided,
3 and the vernal pools that were mapped, and I
4 checked those numbers with the numbers that were
5 in the biological assessment. Which in fact, in
6 those tables, the acres did differ from what was
7 in the 404 permit, if those pools were within 250
8 feet and there were a different acreage amount
9 more in the biological assessment than in the 404
10 permit.

11 And I went through and I looked at that,
12 and made sure that the assessment included
13 anything that was not, like I said, on the other
14 side of the road or the railroad tracks.

15 MS. MOORE: Did you go out and look at
16 each of these areas, where you made that type of a
17 judgment in the field?

18 MS. DORIN: I did. I actually went on
19 site visits with the Applicant, and I also went on
20 separate site visits with the U.S. Fish and
21 Wildlife Service, and we did an inventory of
22 habitat.

23 MS. PEASHA: Nothing further from us.

24 HEARING OFFICER SHEAN: That's it?

25 Okay, Mr. Roskey?

1 MR. ROSKEY: Thank you. I have a couple
2 of questions I'd like to ask. In your report you
3 say that, at 1,000 feet the noise impact, the
4 noise registers at 56 decibels, is that correct?

5 MS. HOLMES: Can you provide a page
6 reference so that we can find it more quickly?

7 MR. ROSKEY: 4.2-25.

8 MS. HOLMES: Thank you.

9 MS. DORIN: That is correct.

10 MR. ROSKEY: I was just curious, did you
11 find any vernal pools or anything of that sort in
12 the nests or anything like that within a thousand
13 feet?

14 MS. DORIN: Yes, there are sensitive
15 wetland resources, and there are potential for
16 nesting birds within that. That is one of the
17 reasons why we are requiring a 2081 permit. And
18 there will be a mitigation measure and a condition
19 for certification requiring a plan for monitoring
20 raptors along the gas pipeline, anywhere there's
21 an HDD bore, in order to reduce that impact.

22 MR. ROSKEY: I do see that you analyze
23 NOX, SOX and so on. Did you analyze VOC
24 emissions?

25 MS. DORIN: No, I didn't.

1 MR. ROSKEY: I notice that you say you
2 did analyze PM-10. Does that include PM-2.5 and
3 less?

4 MS. DORIN: It does to the degree that
5 the modeling that was done for the AFC represents
6 the PM-2.5.

7 MR. ROSKEY: Okay. Am I correct in
8 assuming that you used the model that they
9 furnished in deciding what the effects of NOX and
10 SOX would be?

11 MS. HOLMES: Just a question of
12 clarification. Are you asking whether or not she
13 used the model results in the AFC?

14 MR. ROSKEY: Yes.

15 MS. DORIN: Yes. I used the air quality
16 section out of the AFC.

17 MR. ROSKEY: I would like to ask a
18 couple of questions concerning that model. Are
19 you familiar with that model?

20 MS. DORIN: I am not. I only looked at
21 the results.

22 MR. ROSKEY: Are you familiar with the
23 history of the application of that model?

24 MS. DORIN: I am not.

25 MR. ROSKEY: Why is it that you decided

1 to use their model, was it because there was none
2 other?

3 MS. HOLMES: I think she's already
4 testified that she's not familiar with the model,
5 she simply took the results from the AFC.

6 HEARING OFFICER SHEAN: Okay, the
7 question merely was why did she choose to use this
8 one.

9 MR. ROSKEY: Why did you accept their
10 use of this model, versus anything else?

11 MS. DORIN: I used the results of the
12 model as they were presented in order to assess
13 whether this project would have an impact to
14 biological resources from the emissions. And I
15 used the numbers in the AFC and compared them to
16 background numbers and -- just for the purpose of
17 my analysis.

18 I also addressed whether there were
19 sensitive biological resources such as serpentine
20 habitats, or resources that would be particularly
21 impacted from the emissions.

22 MR. ROSKEY: Okay. Did you analyze the
23 effect of lighting on habitat in the area?

24 MS. DORIN: I did.

25 MR. ROSKEY: Where is that in here?

1 MS. DORIN: It isn't clearly stated, but
2 it is part of the avian collision and
3 electrocution section.

4 MR. ROSKEY: Could you point it out, I'm
5 sorry, I'm just skimming and I don't see it?

6 MS. DORIN: It's actually the first
7 sentence, "bird collisions with electric
8 transmission lines, transmission line groundwires
9 and exhaust stacks can result in significant bird
10 losses."

11 MR. ROSKEY: Okay, you wouldn't foresee
12 any disturbance of any other species as a result
13 of the lighting?

14 MS. DORIN: Guidelines for lighting
15 impacts are in reference to towers that are
16 usually hundreds of feet tall, and I have done
17 background research and have gone to U.S. Fish and
18 Wildlife Service recommendations and also
19 information that is provided by studies on
20 towerkill.com, which is a website that has
21 information on potential for lighting impacts.

22 To the degree that these towers are
23 relatively short, and migrating birds are
24 usually -- fly higher than that, then I did not
25 find a significant impact from lighting. Although

1 we do make recommendations for lighting color.

2 MR. ROSKEY: I have a question from my
3 colleague here. Could you specify which impacts
4 there are because of the noise?

5 MS. DORIN: I was concerned that there
6 could be nest failures from noise from the
7 horizontal directional drilling equipment, as well
8 as construction impacts, and because of that those
9 nests will have to be monitored, and there are
10 mitigation measures to acquire biological monitors
11 out to a quarter mile from any long-term
12 disturbance.

13 And if there are nesting birds in the
14 vicinity part of the monitoring plan, it would
15 include timing constraints or the amount of hours
16 those activities could go on.

17 To the degree that, once the project is
18 built, ongoing noise -- if there are raptors that
19 come in to nest after that point, then that
20 wouldn't be a significant impact, as the noise
21 would already be there, and if the bird comes in
22 to use it. So it's for construction-related
23 activities.

24 MR. ROSKEY: I guess it's a point I
25 guess I would like to argue, on that one. I'll

1 save it for public comment. Do you actually
2 research deposition levels for ponds and how that
3 might affect species?

4 MS. HOLMES: I'm sorry, I didn't
5 understand the question, could you please restate
6 that?

7 MR. ROSKEY: That would be the
8 deposition, the filtration or whatever of
9 emissions into the water, you know, as it falls.
10 Did you find anything that discusses specifically
11 how that affects aquatic environments?

12 MS. DORIN: I did not do an analysis of
13 nitrogen deposition on the vernal pools for this
14 project.

15 MR. ROSKEY: Thank you.

16 HEARING OFFICER SHEAN: All done?

17 MS. MOORE: Can I ask her one more
18 question?

19 HEARING OFFICER SHEAN: Yes, just
20 because I'm writing a note. Go ahead.

21 MS. MOORE: Ms. Dorin, are you familiar
22 with Fish and Game's mitigation guidelines for
23 burrowing owl?

24 MS. DORIN: I am.

25 MS. MOORE: Can you tell me when are the

1 recommended times of the day where you'd conduct
2 those surveys?

3 MS. DORIN: Usually in the morning and
4 in the evening.

5 MS. MOORE: Do you know how long the
6 period is in the morning and evening?

7 MS. DORIN: I believe it is as you
8 stated earlier, two hours after sunrise and two
9 hours before sunset, one hour after sunset.

10 MS. MOORE: In your FSA on page 4.2-23,
11 you identify that SMUD has told you that a
12 protocol level survey at the project site and
13 linear facilities would be conducted in April,
14 2003. In your opinion, did they follow the
15 recommended survey protocol by Fish and Game?

16 MS. DORIN: Based on the time period
17 that Ms. Crowe stated, which was eight in the
18 morning until five in the afternoon, the morning
19 and evening periods for those surveys would be
20 protocol level.

21 MS. MOORE: Do you know what time the
22 sun rises?

23 MS. HOLMES: Can you be more specific,
24 at what time of year?

25 MS. MOORE: On April 21, 2003, do you

1 know what time the sun rose?

2 MS. DORIN: Well, I know the sun's up
3 about six now, so assuming that it was up later
4 than that then, since it was earlier in the year.

5 MS. MOORE: And the recommended protocol
6 survey window, as I stated, which was -- can you
7 just repeat what you said as to when the sun
8 rises?

9 MS. DORIN: Two hours after sunrise.

10 MS. MOORE: So if the sun rose at six
11 then the survey period would end at what time?

12 MS. DORIN: 8:00.

13 MS. MOORE: And when did they begin
14 their surveys?

15 MS. DORIN: 8:00.

16 MS. MOORE: Do we have the same
17 situation in the evening?

18 MS. DORIN: Yes.

19 HEARING OFFICER SHEAN: Okay. I just
20 have a question because I'm trying to clarify page
21 4.2-25. In the fourth full paragraph you state
22 here "loss of foraging and nesting habitat for
23 bird species, nest abandonment, or forced () would
24 result in significant impacts." Is that your
25 conclusion, that there will be significant

1 impacts?

2 MS. DORIN: Yes. If the Swainson's hawk
3 abandons a nest due to construction activities
4 then that would result in take of that species,
5 and they are protected under California Department
6 of Fish and Game code, and --

7 HEARING OFFICER SHEAN: And is that what
8 this 2081 permit is about?

9 MR. COHN: Correct.

10 HEARING OFFICER SHEAN: And that
11 essentially is the, maybe mitigation is the wrong
12 word for this, but that's either the mitigation or
13 the remediation of that issue?

14 MS. DORIN: It's one of the forms of
15 mitigation. And, to the degree that that permit
16 mirrors mitigation measures that I have
17 recommended, that is the goal of Fish and Game, to
18 be consistent.

19 I can't approve take, so I couldn't let
20 the Applicant construct if there was a potential
21 for take. Fish and Game, as the agency that
22 allows that, could, in their permit, allow that.
23 Although they normally don't.

24 HEARING OFFICER SHEAN: All right. So
25 I'm trying to get to the bottom line here. Do we

1 think there is a significant impact, or do we
2 think there is not?

3 MS. DORIN: There wouldn't be with the
4 implementation of mitigation measures that are
5 having a designated biologist there monitoring the
6 nest, and having that monitor assuring that there
7 was not abandonment of the nest.

8 Those measures get included into bio-
9 condition five, which is our BRMIMP condition, and
10 the Fish and Game permit also gets included into
11 that. And so we incorporate any additional
12 measures that Fish and Game would have. So, it's
13 less than significant with mitigation.

14 HEARING OFFICER SHEAN: I have a
15 question about the conclusion you have at the top
16 of page 4.2-28. You say in this paragraph "staff
17 supports SMUD's use of ZLD, for Zero Liquid
18 Discharge, and the potential use of reclaiming
19 water in phases one and two. These project
20 elements would reduce the cumulative impacts to
21 the lower American River to less than significant
22 levels."

23 How is it that a potential use would
24 reduce that? Isn't it only if used that it would
25 reduce it? Do these things, do the ZLD and the

1 potential use of reclaimed water stand
2 independently in your mind?

3 MS. DORIN: They do stand independently
4 in my mind.

5 HEARING OFFICER SHEAN: And would ZLD
6 alone, in your mind, reduce any impacts to the
7 lower American River to less than significant?

8 MS. DORIN: Yes.

9 HEARING OFFICER SHEAN: Yes. Okay.
10 That's all I have. If you have any redirect?

11 MS. HOLMES: Yes, just one quick
12 question, at least I hope it's quick. Ms. Dorin,
13 do you believe that the burrowing owl surveys that
14 you were provided are sufficient for you to base
15 your opinion about the potential significance of
16 impacts?

17 MS. DORIN: Yes, I do. And because
18 burrowing owls can come and use a location at any
19 time, there are mitigation measures and a
20 condition of certification that would require
21 either habitat compensation or a burrow
22 replacement if, on the 48 hour survey, burrowing
23 owls were then located.

24 So there are protection measures in
25 here, in order to ensure that the impacts are reduced.

1 MS. HOLMES: So, would it be correct to
2 say that, regardless of whether or not the
3 previous surveys were protocol-level surveys as
4 they have been defined by the Intervenor, you
5 believe that the fact that there will be surveys
6 immediately prior to construction will
7 satisfactorily address the potential presence of
8 any burrowing owls?

9 MS. DORIN: Correct.

10 MS. HOLMES: No further questions.

11 HEARING OFFICER SHEAN: Okay. Any
12 recross?

13 MS. LUCKHARDT: I have no recross, I was
14 just going to request that the entire document
15 that's been the subject of various recollections
16 be admitted. It's the document that's been
17 referenced by Ms. Moore, by Ms. Crowe, and now
18 been discussed with Ms. Dorin.

19 That would be the CDFG 1995 Staff Report
20 on burrowing owl mitigation, I believe it's dated
21 September 25th, 1995. And so, if there's no -- I
22 don't know if we need to formally add that as an
23 Exhibit, or if we can refer to that as kind of a
24 guidance document, like you would a regulation.

25 HEARING OFFICER SHEAN: Sure, why don't

1 we take notice of that. This CDFG -- is it
2 guidelines, it doesn't say protocol?

3 MS. LUCKHARDT: The way it's listed
4 here, and I'm referring to Debra Crowe's testimony
5 on the second page of the burrowing owl survey, is
6 referred to as California Department of Fish and
7 Game Staff Report on burrowing owl mitigation,
8 September 25th, 1995.

9 HEARING OFFICER SHEAN: Okay. So if the
10 parties want to write up something in their briefs
11 that uses that, you can do that. Okay. Do you
12 have any further redirect, you're limited to
13 asking questions on the answers she gave to her
14 direct?

15 MS. MOORE: No, I have nothing.

16 HEARING OFFICER SHEAN: Anything from
17 you?

18 MR. ROSKEY: Yes, I have a question
19 about something that was raised by staff. Can I
20 -- it's not something that I raised earlier,
21 but --.

22 HEARING OFFICER SHEAN: It doesn't have
23 to be your question, but it has to be within the
24 scope of what Ms. Holmes asked of her own witness
25 on redirect.

1 MR. ROSKEY: Well, I try anyway. You
2 can tell me if I'm wrong. With mitigations that
3 have been proposed, there are some that are called
4 creation mitigations. Do you have any knowledge
5 as to how successful creation mitigations are?

6 MS. HOLMES: Objection, outside the
7 scope of redirect. I asked one question about
8 burrowing owls.

9 HEARING OFFICER SHEAN: Okay. I think
10 that's something we could have brought up earlier.
11 All right, with that then, we have completed the
12 staff's witness on biology. Thank you, and you're
13 dismissed.

14 Which bring us now, Ms. Peasha, to you
15 and your witness.

16 MS. MOORE: I have a public comment I
17 want to make, and I don't know when you want to do
18 that?

19 HEARING OFFICER SHEAN: After your
20 testimony. Now, I believe you were previously
21 sworn in the last proceeding, is that correct?

22 MS. PEASHA: Okay. Ms. Moore, did you
23 submit a pre-filed hearing testimony?

24 MS. MOORE: Yes, I did submit the
25 testimony, dated May 8th.

1 MS. PEASHA: Do you have any changes or
2 additions to make to your pre-file testimony?

3 MS. MOORE: I'd just like to refine
4 that, in my testimony on -- well, I guess I want
5 to add that, on the second page of my testimony, I
6 still don't have those six pages that are missing,
7 but I don't think that's really a change.

8 But, on the bottom of the third page, I
9 identified that a detailed and comprehensive
10 analysis of alternate onsite project layout
11 pursuant to the Corps' alternatives analysis is
12 either not been prepared, not made available for
13 review by staff or other parties.

14 I want to apologize for my lack of
15 knowing that Dr. Huffman had prepared an
16 alternatives analysis that I wouldn't describe as
17 detailed and comprehensive, but it is an
18 alternative analysis, it's a start. So, I -- one
19 has been prepared. That's my only change.

20 HEARING OFFICER SHEAN: And did you say
21 that was on the bottom of your second page?

22 MS. MOORE: That's on the bottom of my
23 third page, last paragraph.

24 HEARING OFFICER SHEAN: All right.

25 MS. MOORE: So, I still think a detailed

1 and comprehensive analysis has not been prepared,
2 but at least we're moving forward.

3 HEARING OFFICER SHEAN: Okay. Why don't
4 we, at this point, I'm not sure, I'm sorry, I
5 don't recall whether we qualified her the last
6 time.

7 MS. LUCKHARDT: I believe we qualified
8 her to testify on land use. I have no objection
9 to qualifying Ms. Moore to testify on biology. I
10 would want to clarify as to whether she intends to
11 give a legal opinion in any part of her testimony.

12 MS. MOORE: Well, since we know she's
13 not going to try to be qualified as a lawyer,
14 we'll make sure from the chair we limit whatever
15 her response may be. So we'll show her as so
16 qualified.

17 Is there objection to the admission of
18 her May 8, 2003 testimony that's entitled
19 "memorandum?" Okay, hearing none, it's submitted.
20 All right, is there any cross-examination of Ms.
21 Moore. Anything from the applicant?

22 MS. LUCKHARDT: Yes, I just have some
23 general questions. Ms. Moore, can you describe
24 the types of projects you typically work on?

25 MS. MOORE: I work on a wide range of

1 projects. I've done a lot of ski resort projects,
2 probably about one-third of my current work
3 experience is in wetland permitting. We do
4 extensive amounts of baseline biology inventory
5 for development projects.

6 I do a tremendous amount of work for
7 both San Joaquin and Stanislaus County Public
8 Works on road and bridge projects, complete
9 environmental review and permitting -- the biology
10 of those projects. I work on a lot of
11 agricultural projects, delineations on
12 agricultural lands.

13 And we probably have about 150 of what I
14 would call small projects come through our office
15 each year.

16 MS. LUCKHARDT: And are any of those
17 projects in the immediate vicinity of this
18 project?

19 MS. MOORE: Yes, I've worked on projects
20 that are in the immediate vicinity of portions of
21 this project.

22 MS. LUCKHARDT: Did you work on a
23 vineyard installation owned by, I guess, a Gary
24 Patterson?

25 MS. MOORE: I worked for Nestor

1 Enterprises, yes. Gary's the manager of Nestor.

2 MS. LUCKHARDT: And do you recall what
3 mitigation you used for that project?

4 MS. MOORE: For the vineyard
5 installation project?

6 MS. LUCKHARDT: Yes, I'm assuming it had
7 vernal pools?

8 MS. MOORE: Have you seen the wetland
9 delineation for that project?

10 MS. LUCKHARDT: I'm asking the
11 questions, okay?

12 MS. MOORE: So, are you saying that
13 you're assuming it has vernal pools, is that a
14 question?

15 HEARING OFFICER SHEAN: Wait, back that
16 out. You just ask the question directly, and then
17 we'll take care of that.

18 MS. LUCKHARDT: Did the construction of
19 that vineyard involve destroying vernal pools?

20 MS. MOORE: No, it did not.

21 MS. LUCKHARDT: How about the Borden
22 Ranch development?

23 MS. MOORE: What about the Borden Ranch
24 development?

25 MS. LUCKHARDT: Did you work on the

1 Borden Ranch development?

2 MS. MOORE: As far as what part of the
3 Borden Ranch?

4 MS. LUCKHARDT: As far as being a
5 biological consultant analyzing whether they had
6 impacts to endangered species or vernal pools?

7 MS. MOORE: No, I did not. I'd like to
8 add, I've subsequently worked on the Borden Ranch,
9 but not in that capacity. I've worked on some
10 permitting things there, as well as some fencing
11 projects.

12 MS. LUCKHARDT: Have you ever worked as
13 a professional expert who's objective is to oppose
14 a development project?

15 MS. MOORE: To oppose a development
16 project?

17 MS. LUCKHARDT: Right.

18 MS. MOORE: No, I have not.

19 MS. LUCKHARDT: Did you attend any of
20 the CEC-sponsored staff workshops on biology for
21 this project?

22 MS. MOORE: No, I did not.

23 MS. LUCKHARDT: Did you contact SMUD and
24 walk down the project site, or propose laydown
25 areas?

1 MS. MOORE: Did I contact SMUD?

2 MS. LUCKHARDT: And walk down the
3 proposed site or laydown areas? Those are SMUD--
4 owned properties, so --

5 MS. MOORE: No, I have not.

6 MS. LUCKHARDT: And have you contacted
7 SMUD and walked down the pipeline route?

8 MS. MOORE: I have not contacted SMUD
9 and walked down the pipeline route. Most of the
10 pipeline is along roads that I drive regularly
11 because I live out here. So I --

12 MS. LUCKHARDT: Have you walked the
13 route?

14 MS. MOORE: No, I have not walked the
15 route.

16 MS. LUCKHARDT: On the top of page four
17 of your testimony, you refer to a statement made
18 by Corps staff. I'm wondering if you could
19 identify who at the Corps?

20 MS. MOORE: I spoke with Justin Cutler
21 last Thursday.

22 MS. LUCKHARDT: And was it Mr. Cutler
23 who made this statement to you?

24 MS. MOORE: Yes, it was.

25 MS. LUCKHARDT: Do you know to which

1 project Mr. Cutler was referring?

2 MS. MOORE: Do I know what project he
3 was referring to?

4 MS. LUCKHARDT: Yes.

5 MS. MOORE: Yes, Mr. Cutler has been e-
6 mailing me on the status of the public notice
7 because I've been looking for this project, so we
8 both know which project we're talking about.

9 MS. LUCKHARDT: So is it your
10 testimony -- forget that. Is a prohibition
11 against the use of wetland mitigation banks
12 published anywhere in Corps guidance documents?

13 MS. MOORE: I can't say that I'm
14 familiar with every guidance document the Corps
15 has ever published. I have looked at some of
16 their guidance documents regarding the use of
17 mitigation banks, so I'm not citing something
18 published, I'm citing something spoken in that
19 portion of the testimony.

20 MS. LUCKHARDT: And are you aware that
21 the mitigation proposed for giant garter snake
22 involves creating a new mitigation area?

23 MS. MOORE: Creating a new mitigation
24 area?

25 MS. LUCKHARDT: Yes. Are you aware that

1 it's a new bank?

2 MS. MOORE: Yes, I am aware it's a new
3 bank.

4 MS. LUCKHARDT: And are you aware that
5 the area is currently a plowed ag field?

6 MS. MOORE: This is related to the
7 confidential BR-12, is that what we're talking
8 about?

9 MS. LUCKHARDT: That's all the
10 information I have about it. I'm asking you if
11 you are aware of that. You're a biologist, you
12 work in this area, you may or may not be aware of
13 it.

14 MS. MOORE: I'm not aware of it.

15 MS. LUCKHARDT: Okay. Have you
16 recommended in the past that landowners request
17 removal of their property from proposed critical
18 habitat designation?

19 MS. MOORE: I'm sorry, before I answer
20 this question I'm going to ask you to repeat it.
21 But, Mr. Shean, I've got a kid that's got to get
22 to a softball game. I'd like to just make a phone
23 call and get somebody to get him a ride there. I
24 thought I was going to be out of here by now.

25 HEARING OFFICER SHEAN: Okay. Because

1 we have another phone call that needs to be made
2 on our alternatives witness. Yeah, we can do
3 that. We'll take a quick five minute thing here.
4 (Off the record.)

5 HEARING OFFICER SHEAN: Back on the
6 record. Ms. Moore, and Ms. Luckhardt.

7 COMMISSIONER PERNELL: Ms. Moore, is
8 everything okay? Your --

9 MS. MOORE: I've got one kid on their
10 way to softball, and the other three need to be
11 picked up about 6:10. So as long as we're out of
12 here by six, I'll be fine.

13 MS. LUCKHARDT: I'm close to the end.
14 Okay, the last question was have you recommended
15 to landowners that they request removal of their
16 property from the proposed critical habitat
17 designation?

18 MS. MOORE: No, I have not.

19 MS. LUCKHARDT: Have you recommended
20 that individual's write to have their property
21 removed from critical habitat designation?

22 MS. MOORE: Can you repeat that
23 question, it sounded kind of like the last one?

24 MS. LUCKHARDT: Have you recommended to
25 landowners that they write and request that their

1 property be removed from proposed critical habitat
2 designation?

3 MS. MOORE: Absolutely not.

4 MS. LUCKHARDT: At this time I would
5 like to show you -- I'll pass out copies to
6 everybody -- a document that was provided at the
7 Southeast Area Planning Advisory Council by Ms.
8 Moore. It has the cover letter from Carol
9 Backert, and then a supporting draft letter.

10 Ms. Moore, if you could read into the
11 record the second paragraph, probably the first
12 two sentences would be sufficient?

13 MS. MOORE: Of --

14 MS. LUCKHARDT: The initial letter of
15 the Southeast Area Planning Advisory Council, the
16 first page?

17 MS. MOORE: Of Carol's letter?

18 MS. LUCKHARDT: Yes.

19 MS. MOORE: It says "as you recall,
20 Diane Moore explained the proposed law regarding
21 critical habitat, and how it will impact our area.
22 She has provided the attached text to help you
23 write a letter."

24 MS. LUCKHARDT: And now if you could
25 read into the record the first paragraph of the

1 attached draft letter?

2 MS. MOORE: "I am writing today to
3 object to the critical habitat designation for
4 four vernal pool crustaceans and 11 vernal pool
5 plants in California and southern Oregon, as
6 outlined in the September 24th, 2002 federal
7 register. I object to this proposal for the
8 following reasons:"

9 MS. LUCKHARDT: Thank you. I would like
10 to have this document admitted into evidence.

11 HEARING OFFICER SHEAN: Okay. Now,
12 we'll mark it and this would be Exhibit 7, a
13 letter dated November 19th, 2002, addressed to
14 "Dear Community Member" from a Carol Backett, and
15 it's on stationary, or letterhead at least, of
16 Southeast Area Community Planning Advisory
17 Council. Okay, it's marked.

18 MS. LUCKHARDT: And I would request that
19 it be admitted into evidence?

20 HEARING OFFICER SHEAN: Okay. Is there
21 objection?

22 MS. PEASHA: I object to it. I would
23 like to ask Ms. Luckhardt why, what's the
24 relevance here of, while Diane is sitting here --
25 Diane could tell us why she prepared this, and

1 what the relevance is to this hearing.

2 MS. LUCKHARDT: It goes to the
3 credibility of the witness.

4 HEARING OFFICER SHEAN: Let me just -- I
5 have some questions before -- simply because they
6 are not attorneys. And obviously this is intended
7 to impeach this witness, so let's -- what it's
8 ultimate effect is, I am indifferent to. It's a
9 matter of making sure that the record is
10 appropriate.

11 First of all, do any of these
12 designations have anything to do with the SMUD
13 project or the pipeline or the power plant?

14 MS. LUCKHARDT: The critical habitat
15 designation would apply if approved as it exists
16 now to the SMUD project area.

17 HEARING OFFICER SHEAN: So, does the
18 four vernal pool crustaceans and 11 vernal pool
19 plants, and the critical habitat designation for
20 those, affect this project directly or indirectly?

21 MS. LUCKHARDT: The SMUD project area is
22 within the proposed critical habitat designation.

23 HEARING OFFICER SHEAN: So, your answer
24 is yes, this does affect this directly. All
25 right, did you have anything further you want to

1 say?

2 MS. PEASHA: Yes, I'd like to redirect
3 to Diane, Ms. Moore, about why she prepared this?

4 HEARING OFFICER SHEAN: All right. Now
5 those are questions you would be able to ask on
6 her redirect examination. Right now, it's a
7 question of whether to admit this or not. And I
8 guess that's a fancy lawyer term, and neither of
9 you are lawyers --

10 MS. PEASHA: I still disagree that it
11 should not be --

12 MR. ROSKEY: I would like to ask what
13 does this have to do with her professional
14 qualifications? Perhaps she accepted a request
15 for advice from neighbors. I don't understand how
16 this really goes to the matter of whether she is
17 professionally qualified to make the testimony
18 that she has made.

19 HEARING OFFICER SHEAN: All right. And
20 that goes to weight. So, the question of
21 admissibility is sufficiently established with the
22 answers given to me by Ms. Luckhardt, so it will
23 be admitted. You will have an opportunity, both
24 yourself to ask some questions, Mr. Roskey, and
25 I'm sure to understand for the committee's

1 purposes the intended use of this I may have some
2 as well.

3 But it is admitted. Do you have further
4 questions?

5 MS. LUCKHARDT: I have nothing further.

6 HEARING OFFICER SHEAN: No further
7 questions. All right, anything from the
8 Commission staff? Do you have any questions of
9 this witness?

10 MS. HOLMES: No.

11 HEARING OFFICER SHEAN: Mr. Roskey, do
12 you?

13 MR. ROSKEY: Any direct questions?

14 HEARING OFFICER SHEAN: Any cross-
15 examination of Ms. Moore.

16 MR. ROSKEY: No.

17 HEARING OFFICER SHEAN: Okay, your turn.

18 MS. PEASHA: I would like to redirect.

19 HEARING OFFICER SHEAN: And if you would
20 like to consult with Ms. Mendonca, you may.

21 MS. PEASHA: This letter is not signed
22 by you, Ms. Moore?

23 MS. MOORE: No, it's not signed.

24 MS. PEASHA: Did you prepare this
25 document?

1 MS. MOORE: Yes, I did write this draft
2 text, and I think it's probably appropriate to
3 tell you why it was written and in what context.

4 HEARING OFFICER SHEAN: Okay, that was
5 the next question, so why don't you just go ahead
6 and do that.

7 MS. MOORE: I work for a, as I said, a
8 number of agricultural interests, developers. I
9 live in a critical habitat area, an area that's
10 proposed as critical habitat.

11 When the critical habitat designation
12 proposal came out on the federal register, it was
13 in excess of 200 pages long and it did not include
14 maps that went along with it that were
15 decipherable to identify geographically what areas
16 were proposed for critical habitat, and there was
17 a very short time window for the public to
18 respond.

19 I was asked by a group of -- many of my
20 clients, who are wine/grape growers, some who are
21 cattle ranchers down in the Merced area, some of
22 who are developers, some of who are local
23 residents here -- called me and asked me what the
24 heck is this thing that just came out, and what
25 does it mean to us. And I actually had a couple

1 of people call and say "you know what, I need to
2 write a letter and request that my property be
3 exempted from this critical habitat designation."

4 And my response to that wine/grape
5 grower was you absolutely don't want to ask for an
6 exemption for your property, you want to just
7 oppose the designation due to its inadequacy. And
8 so, basically, this is not a letter that
9 identifies that a person is requesting that their
10 property be excluded, it's a letter identifying
11 that people have concerns about the listing, and
12 they want further study and further time for
13 review.

14 So that's a history of this letter. I
15 was invited by Carol Backert to come and speak at
16 the CPAC on this for informational purposes, and
17 this letter not only was -- I've never seen her
18 cover letter for it before -- but this letter that
19 I wrote is a draft letter of some text to help
20 give people the address to what they're going to
21 be writing to, to identify what they're putting
22 comments on, and to identify some of the topics
23 they might want to cover.

24 This letter was subsequently used by
25 numerous people, modified and signed and sent in

1 to the Fish and Wildlife Service during the
2 comment period. But it does not specifically
3 identify that people are asking for an exception
4 for their property.

5 So that's the history of this letter.
6 This is one of my good things that I did for the
7 public, and it would actually be in SMUD's
8 interest to not have the area designated critical
9 habitat. So, I think I should be getting some
10 thanks here.

11 MS. PEASHA: One last question. Did you
12 initiate this letter on your own, or did you --
13 was it requested that you provide this by --

14 MS. MOORE: I was asked by numerous
15 clients over a period of months for help in
16 understanding this. I was asked by Ms. Backert,
17 as a local expert, to come and help our community
18 understand a federal register document that's over
19 200 pages long.

20 MS. PEASHA: I have no further
21 questions.

22 HEARING OFFICER SHEAN: Okay, any
23 recross?

24 MS. LUCKHARDT: Isn't it true, Ms.
25 Moore, that by objecting to the critical habitat

1 designation, that the amount of critical habitat
2 designated could be reduced?

3 MS. MOORE: By people objecting or
4 asking for modifications?

5 MS. LUCKHARDT: Yes.

6 MS. MOORE: Absolutely. It happens all
7 the time.

8 MS. LUCKHARDT: I have nothing further.

9 HEARING OFFICER SHEAN: All right. Ms.
10 Moore, as a witness, you're excused.

11 MS. MOORE: Thank you. Can I make some
12 public comment before I leave today?

13 HEARING OFFICER SHEAN: Relatively
14 limited, I mean --

15 MS. MOORE: It's going to be short.

16 HEARING OFFICER SHEAN: It needs to be.

17 MS. MOORE: Okay. I know this project
18 is going to be built, and I think I said that last
19 time. I know that it's basically going to be
20 where it's proposed. I know that mitigation is
21 tangible for the types of impacts that have yet to
22 be quantified in an acceptable detail.

23 I think that, you know, in my first true
24 experience with the CEC's CEQA-equivalent process
25 I am just grossly offended by the suggestion that

1 it fulfills the heart and soul of CEQA or is an
2 equivalent.

3 CEQA review, the heart and soul of the
4 CEQA review, is full disclosure. Full disclosure
5 involves full inventory. To not have done that
6 inventory when this project started in June of
7 2001 is just, it's not adequate, it doesn't meet
8 the requirements of full disclosure.

9 Giving people like me six days over the
10 Mother's Day weekend instead of the ten to review
11 voluminous materials is truly abusive. I think
12 that, in my experience with the Fish and Wildlife
13 Service, I saw Mr. Shean kind of breathing a sigh
14 of relief when Ken Fuller, not under testimony,
15 said "well, we think everything's going to be
16 fine."

17 I've had many experiences where what
18 they say is 180 degrees different from what they
19 do. And until the Fish and Wildlife Service puts
20 something in writing, whether it's their response
21 to the public notice for the Corps, or their
22 Biological Opinion, both of which are going to be
23 out soon, approving this project at this point is
24 premature from a CEQA perspective and it's just a
25 slap in the face to the public as far as their

1 involvement.

2 This is just sort of a dog and pony
3 show, lacking content but great on pomp and
4 circumstance, if you will. I think that it would
5 be in everybody's best interest to not have to
6 spend days talking about biology -- because you
7 wouldn't need to, because the analysis would be
8 done and the permits would be at least foreseeable
9 enough that you would know what they were going to
10 say.

11 And I respectfully request that the
12 Commission look at extending your decision to
13 allow for the completion of the federal agencies
14 review, finalization of mitigation, which is been
15 presented to us -- quite frankly it's not very
16 tangible, the way I look at it -- and I just don't
17 see a decisionmaking, there doesn't seem to be the
18 correct time to be making a decision in this
19 premature state of the environmental review
20 process.

21 HEARING OFFICER SHEAN: Okay. Thank
22 you. With that, we're going to move to the next
23 topic.

24 MR. ROSKEY: Public comment?

25 HEARING OFFICER SHEAN: You have some?

1 MR. ROSKEY: Brief.

2 HEARING OFFICER SHEAN: Yes.

3 MR. ROSKEY: I just want to make three
4 points. One, pertaining to the model that was
5 used by the Applicant for analysis and effects of
6 emissions, I would like to address that in air
7 quality, when we get there.

8 But I would like to point out here
9 something that I see happening quite a bit, and
10 that is where is the field research to support
11 what you claim is going to happen? And I don't
12 see any here, I see very little. And I think
13 that's a failing that needs to be addressed.

14 Number two, it was pointed out that a
15 Swainson's hawk that's looking for a nest in an
16 area where there is already 65 decibels, it's
17 their own fault if they try to nest there.

18 Well, I have to ask, who's land is this?
19 I mean, weren't they here first? And if they are
20 displaced by noise, isn't that displacement --
21 aren't we doing something to their environment? I
22 mean, I don't see how that doesn't count.

23 And number three, I'd like to point out
24 that Ms. Moore did try to discuss the character of
25 the witnesses that the Applicant presented, and

1 the quality of their research, by asking how long
2 they had been involved on the project, who they
3 were being paid by, and so on, and the Hearing
4 Officer disqualified that testimony.

5 Disqualified that question, but did
6 allow the Applicant to impeach the character of
7 our witness. I don't see that that is reasonable
8 conduct. Thank you.

9 HEARING OFFICER SHEAN: All right.
10 Let's move now to the next topic on our Order of
11 Testimony, which is the Alternatives exam. And we
12 have testimony from the Applicant and the
13 Commission staff.

14 MR. COHN: We're ready to proceed. To
15 be sure everybody has the testimony, this was the
16 front of our prefile testimony. There's three
17 pieces of testimony that we'll be submitting. We
18 have a panel of three witnesses, and I believe all
19 three have already been sworn. We have Ms. Susan
20 Strachan, Colin Taylor, and Kevin Hudson.

21 So let me start with Ms. Strachan.
22 Please state your name and spelling for the
23 record?

24 MS. STRACHAN: Susan Strachan, S-t-r-a-
25 c-h-a-n.

1 MR. COHN: And could you state your job
2 title and duties?

3 MS. STRACHAN: I'm an independent
4 consultant. I primarily provide environmental
5 project management services specifically for
6 energy projects.

7 MR. COHN: And how long have you been
8 working in that capacity, on energy projects?

9 MS. STRACHAN: For 11 years.

10 MR. COHN: And do you have before you
11 the prefiled testimony on alternatives, which was
12 filed as part of SMUD's group two testimony on May
13 5th, along with the resume that was also attached
14 to that testimony?

15 MS. STRACHAN: I do.

16 MR. COHN: And were these documents
17 prepared by your or under your direction?

18 MS. STRACHAN: They were.

19 MR. COHN: And do you have any changes
20 or additions to your testimony at this time?

21 MS. STRACHAN: No, I don't.

22 MR. COHN: Is that testimony true and
23 correct to the best of your knowledge?

24 MS. STRACHAN: Yes, it is.

25 MR. COHN: And do you adopt that

1 testimony as your testimony under oath today?

2 MS. STRACHAN: Yes, I do.

3 MR. COHN: All right, at this time I'll
4 move introduction of Ms. Strachan's testimony into
5 the record.

6 HEARING OFFICER SHEAN: All right. The
7 witness having previously been qualified, is there
8 objection to the admission of the testimony?
9 Hearing none, it is admitted.

10 MR. COHN: All right. Then, with
11 respect to the other piece of testimony from Mr.
12 Hudson and Mr. Taylor, I'll ask you both and then
13 you can answer in order.

14 Mr. Hudson and Mr. Taylor, do you have
15 before you the document entitled "alternatives"
16 including "project site alternatives to pipeline
17 alignment," "alternatives in laydown area," and
18 "alternatives," that was filed on May 5th of this
19 year?

20 MR. HUDSON: Yes, I do.

21 MR. TAYLOR: Yes, I do.

22 MR. COHN: And was this document
23 prepared by you, or under your direction?

24 MR. HUDSON: Yes.

25 MR. TAYLOR: Yes.

1 MR. COHN: And do you have any changes
2 or corrections to this testimony?

3 MR. HUDSON: No.

4 MR. TAYLOR: No.

5 MS. CROWE: And is the testimony true
6 and correct to the best of your knowledge?

7 MR. HUDSON: Yes, it is.

8 MR. TAYLOR: Yes, it is.

9 MR. COHN: And do you both adopt this
10 testimony as your testimony under oath today?

11 MR. HUDSON: Yes, I do.

12 MR. TAYLOR: Yes, I do.

13 MR. COHN: All right, at this time I
14 move into evidence the Alternatives testimony of
15 Mr. Hudson and Mr. Taylor.

16 HEARING OFFICER SHEAN: Okay. I believe
17 both witnesses were previously qualified, so at
18 this point is there objection to admission into
19 evidence the testimony on Alternatives of Mr.
20 Hudson and Mr. Taylor? Hearing none, it is
21 admitted.

22 MR. COHN: All right. And if you could,
23 Mr. Taylor, just briefly summarize your testimony
24 on why the district proposed the site it did, and
25 the laydown area in particular.

1 HEARING OFFICER SHEAN: You know -- I'm
2 sorry. In the interests of time, let's keep it
3 shorter than the testimony that others read, let's
4 just go right to it.

5 MR. COHN: Okay, let me do this, though.

6 There is one Exhibit that I'd like to enter into
7 evidence by Ms. Strachan, and this is in response
8 to the question that the committee had about how
9 this project was different than the El Segundo
10 project.

11 I believe the question had been raised
12 back in March as to why we could not do a remote
13 laydown area. So, if I may, I could --

14 HEARING OFFICER SHEAN: You can, but the
15 committee doesn't seriously have a question as to
16 that. I mean, the difference between the two
17 projects is -- at least in my mind, and since we
18 were both there, just glaring.

19 MR. COHN: All right. That was just to
20 offer if there were questions about that issue.
21 So, in the interest of time --

22 HEARING OFFICER SHEAN: Both in terms of
23 remote laydown and remote employee parking, the
24 situation at El Segundo is different by -- it's
25 like they are on a different planet.

1 MR. COHN: That's fine. Both witnesses
2 are available for cross-examination.

3 HEARING OFFICER SHEAN: Okay. Anything
4 from the staff?

5 MS. HOLMES: No questions.

6 HEARING OFFICER SHEAN: Ms. Peasha?

7 MS. PEASHA: I don't have the
8 Alternatives in front of me, I don't have them
9 here. So I'm going to let Mr. Sarvey ask a couple
10 of questions quickly of the witnesses, would that
11 be applicable so we can expedite this?

12 I have not looked at these Alternatives,
13 because I don't have them. I got a box of stuff
14 from CH2M Hill that they said I got, and I don't
15 have it.

16 HEARING OFFICER SHEAN: So long as we're
17 not doing discovery on this end, the answer is
18 yes.

19 MR. SARVEY: Okay. Do you have an
20 application on file with the PUC for a certificate
21 of public convenience and necessity for this
22 project?

23 HEARING OFFICER SHEAN: You know --

24 MR. COHN: If I may just indicate, as a
25 public utility and municipal utility we aren't

1 regulated by the Public Utilities Commission, so
2 my witnesses are so surprised by the question they
3 wouldn't even know what to answer.

4 COMMISSIONER PERNELL: You look more
5 surprised than them.
6 (laughter)

7 MR. COHN: And I can assure you we're
8 not looking to change that.
9 (laughter)

10 HEARING OFFICER SHEAN: The answer is an
11 emphatic no.

12 MR. SARVEY: Were you aware that peak
13 demand has fallen from 2000 to 2002 by as much as
14 8.8 percent?

15 HEARING OFFICER SHEAN: First of all --

16 MR. COHN: I don't think any of these
17 witnesses are really here to -- it's beyond the
18 scope of their testimony. If they know the
19 answer --

20 HEARING OFFICER SHEAN: This is as to
21 the no-project alternative?

22 MR. SARVEY: This is a question as to
23 the no-project alternative, yes.

24 HEARING OFFICER SHEAN: All right.
25 Well, why don't you capture it in that sense?

1 MR. SARVEY: I was trying to make it
2 fast, I'm sorry. In relation to the no-project
3 alternative, are you aware of the fact that peak
4 demand has fallen since 2000 to 2002 by as much as
5 8.8 percent in the peak months?

6 MR. TAYLOR: I don't know that that
7 applies to SMUD. It may apply to the whole of
8 California.

9 MR. SARVEY: Okay. Are you aware that
10 peak electricity demand in the ISO-control area is
11 well below 8 percent of what was expected in 2000?

12 MR. HUDSON: SMUD is not in the ISO-
13 controlled area. SMUD has its own control area.

14 MR. SARVEY: Are you aware that demand
15 has fallen since 2000?

16 MR. TAYLOR: As I said earlier, I don't
17 know that SMUD's demand has fallen. We are
18 supplying electricity to our own system.

19 MR. SARVEY: Are you aware that the CEC
20 now has 7,114 megawatts under construction?

21 MR. TAYLOR: I'm not aware of the exact
22 number, I'm sure there are some plants under
23 construction.

24 MR. SARVEY: Are you aware of any plants
25 that are under construction in your area?

1 MR. TAYLOR: In Sacramento County?

2 MR. SARVEY: Yes.

3 MR. TAYLOR: I don't know that there's
4 any in Sacramento county.

5 MR. SARVEY: Okay. How many megawatts
6 of PV do you have on the project site right now,
7 at the project area?

8 MR. TAYLOR: Actually at Rancho Seco?

9 MR. SARVEY: Yes.

10 MR. TAYLOR: I believe about 4 or 5.

11 MR. SARVEY: And what's the land area
12 that that encompasses?

13 MR. TAYLOR: I would guess it covers,
14 probably, sixty or seventy acres.

15 MR. SARVEY: And how many megawatts did
16 the former Rancho Seco Nuclear Plant generate?

17 MR. TAYLOR: About 900 megawatts.

18 MR. SARVEY: Thank you.

19 HEARING OFFICER SHEAN: Done? Thank
20 you. And anything from the staff or from you, Mr.
21 Roskey? All right. Let me just -- is there any
22 redirect?

23 MR. COHN: No, we have none.

24 HEARING OFFICER SHEAN: All right.

25 Thank you ladies and gentlemen, we appreciate it.

1 You're excused.

2 COMMISSIONER PERNELL: Thank you, panel.

3 HEARING OFFICER SHEAN: Okay, commission
4 staff?

5 MS. HOLMES: Staff's witness is Nega
6 Vahidi, and I don't think she's been sworn yet.
7 Whereupon,

8 NEGA VAHIDI
9 was called as a witness and herein, after being
10 duly sworn, was examined and testified as follows:

11 MS. HOLMES: Ms. Vahidi, was the
12 alternatives portion of the staff FSA, part three,
13 on the Cosumnes Power Plant Project, prepared by
14 you or under your direction?

15 MS. VAHIDI: Yes, it was.

16 MS. HOLMES: And does that document
17 contain a statement of your qualifications?

18 MS. VAHIDI: Yes, it does.

19 MS. HOLMES: And do you have any changes
20 or corrections to your testimony at this time?

21 MS. VAHIDI: I do not.

22 MS. HOLMES: Are the facts contained in
23 your testimony true and correct?

24 MS. VAHIDI: Yes, they are.

25 MS. HOLMES: And do the opinions

1 contained in your testimony represent your best
2 professional judgment?

3 MS. VAHIDI: Yes.

4 MS. HOLMES: And I think, at this point,
5 Hearing Officer Shean, you would like me to move
6 the qualifications of introduction of the
7 testimony?

8 HEARING OFFICER SHEAN: Okay. Is there
9 an objection to the qualifications of this witness
10 to testify as an expert? Hearing none, she is so
11 qualified. Is there objection to the admitting of
12 her testimony into evidence? Hearing none, it is
13 admitted.

14 MS. HOLMES: Thank you. I think, in the
15 interest of moving things along once again we'll
16 skip the summary of the testimony and simply make
17 Ms. Vahidi available for cross-examination.

18 HEARING OFFICER SHEAN: Sure. Thank
19 you. Anything from the Applicant? Anything from
20 Ms. Peasha? Mr. Roskey? Okay, I have one
21 question. Page 6.1-21, the section dealing with
22 visible plumes.

23 MS. VAHIDI: Yes.

24 HEARING OFFICER SHEAN: Do I understand
25 that you would evaluate whether or not there is a

1 visible impact may depend -- to some degree based
2 upon -- the number of people who would see it?

3 MS. VAHIDI: I'm sorry, can you repeat
4 the question?

5 HEARING OFFICER SHEAN: In looking at
6 this paragraph, you have a sentence here that says
7 "because of the number of viewers with
8 unobstructed view of the plumes, the resulting
9 visual impact would likely be adverse and
10 significant."

11 So, my question to you is, in evaluating
12 the degree of impact for visual impact the number
13 of viewers somehow enters that formula?

14 MS. VAHIDI: Yes.

15 HEARING OFFICER SHEAN: And is it a
16 matter of reaching sort of a critical mass in
17 terms of the numbers of people that you'd go from
18 not significant to significant, is that what
19 happens?

20 MS. VAHIDI: I can't testify to the
21 specific numbers, since I'm not a visual expert.
22 This portion of the testimony was provided by
23 visual staff, Energy Commission visual staff.

24 HEARING OFFICER SHEAN: Okay. So this
25 is not your testimony, it was supplied to you?

1 MS. VAHIDI: Yes, based on direction, on
2 how the analysis was to be performed, under my
3 direction I enlisted the help of the experts from
4 Energy Commission staff to conduct analysis for
5 the three alternative sites.

6 HEARING OFFICER SHEAN: Okay. So your
7 conclusion here, "therefore, with mitigation,
8 neither the alternative site nor the proposed
9 project would result in significant visual impacts
10 from project plumes" fundamentally is the
11 conclusion of another person which you are
12 incorporating?

13 MS. VAHIDI: Yes.

14 MR. COHN: Ms. Vahidi, I have a
15 question. In the third line from the bottom --

16 MS. VAHIDI: On the same page?

17 MR. COHN: Yes. The last paragraph.
18 Should that be Lodi, or should that be another
19 location?

20 MS. VAHIDI: The third line under which
21 header?

22 MR. COHN: Visible plumes?

23 MS. VAHIDI: Oh, and we're still, okay.
24 Yes, it's under the Lodi site analysis.

25 MR. COHN: Okay.

1 HEARING OFFICER SHEAN: Can I refer you
2 to page 6.1-27, on the visual plumes analysis for
3 the Woodland site?

4 MS. VAHIDI: Yes.

5 HEARING OFFICER SHEAN: Um, again, was
6 this paragraph supplied to you?

7 MS. VAHIDI: Yes, it was. But, if it
8 helps, based on my discussions with staff and
9 their input into this analysis, their conclusion
10 basically was that the visual plume impact would
11 essentially be the same regardless of where the
12 site would be. And applicable mitigation for the
13 proposed CPPP would also apply in those locations.

14 HEARING OFFICER SHEAN: All right. I
15 have no further questions. Do you have any
16 redirect? No. All right. Well, thank you, we
17 understand you have a plane to catch.

18 COMMISSIONER PERNELL: Well, are you on
19 vacation?

20 HEARING OFFICER SHEAN: No, no. Thank
21 you. And the witness is excused. You had some
22 public comment on alternatives?

23 MS. PEASHA: Yes, please.

24 MR. BOYD: Mike Boyd with CARE. I'd
25 like to read a paragraph from the final staff

1 assessment, 4.5-7, under land use.

2 "Public resource code section 25525
3 states that the Energy Commission shall not
4 certify any facility when it finds that the
5 facility does not conform with any applicable
6 state, local, or regional standards, ordinances
7 and laws, unless the Commission determines that
8 such facility is required for public convenience
9 and necessity and that there are no more prudent
10 and feasible means of achieving such public
11 convenience and necessity."

12 "When determining when a project is in
13 conformance with state, local and regional
14 ordinances or regulations, the Energy Commission
15 typically meets and consults with applicable
16 agencies to determine conformity and, when
17 necessary, to attempt to correct and eliminate any
18 non-compliance."

19 Now, my understanding is that,
20 originally, there was another portion of the
21 Warren-Alquist Act that dealt with what's called
22 the assessment of need. And that that was
23 eliminated by SB 110 about a year and a half ago.

24 What wasn't eliminated -- that I saw
25 anywhere in the law -- was the determination of

1 public convenience and necessity, and specifically
2 in this case, in the paragraph below that where it
3 talks about state subdivision maps, it says "the
4 vesting deed for the Rancho Seco area shows that
5 the land was conveyed to SMUD (a public utility)
6 in 1966, with a fee-interest payment.

7 My understanding is that a public
8 utility is different from a merchant generator,
9 for example like Calpine, or Enron or some of the
10 other Applicants that have been before you. This
11 is -- as a public utility -- should have a higher
12 criteria to meet, not a lower criteria to meet.

13 And I've seen nothing in the FSA,
14 nothing in any of the Applicant's analysis, that
15 demonstrates there's a need for this project. In
16 fact, there has been a clear demonstration that,
17 because of manipulation of energy markets in the
18 last two years, that there's an artificial surplus
19 of power now in the state, because we build more
20 power plants than we needed because they were,
21 they pretended like we needed more when they were
22 holding the power back.

23 So now we're in a situation where SMUD,
24 I believe, as a public agency, must demonstrate
25 that there is no more prudent means, more feasible

1 means of achieving such public convenience and
2 necessity. And I believe they have failed to do
3 so to date.

4 And I also believe that, based on the
5 record that's been established to date in these
6 proceedings, that there's clearly several
7 violations of laws, ordinances, regulations, and
8 standards and policies in this process.

9 It's not clear to me what role the PUC
10 has. I understand they're not a regulated
11 utility, but that might not be the case for very
12 long if the FERC gets its way, since there are
13 several show cause orders forthcoming on several
14 parties, including public agencies like SMUD.

15 There's also, I understand, that Senator
16 Dunn last week got the Senate to pass a bill to
17 reinstate regulation. So, from my perspective, as
18 a public agency, they have a duty, under the
19 constitution, to consult with the Public Utilities
20 Commission on this.

21 And there's all these sections where
22 they talk about this public convenience and
23 necessity, and I'll just list some of them --
24 section 2505 of the Warren-Alquist Act,
25 publication of a summary of notice of intention.

1 I never saw any such thing.

2 Section 25506.5, comments and
3 recommendations from the Public Utilities
4 Commission, "the Commission shall request the
5 Public Utilities Commission for sites and related
6 facilities requiring a certificate of public
7 convenience and necessity, and to make comments
8 and recommendations regarding the design,
9 operation, and location of the facility designated
10 and noticed in relation to the economic,
11 financial, rate, system reliability, and service
12 implications of the proposed facility.

13 Another one, 25514.3, "public utilities,
14 in specifying any modifications and conditions or
15 criterias pursuant to 25514 for sites and related
16 facilities requiring a certificate of public
17 convenience and necessity. The Commission shall
18 request the comments and recommendations of the
19 Public Utilities Commission on the economic,
20 financial, rate, system reliability, and service
21 implications."

22 I mean, we're not talking about free-
23 market generator here. We're talking about a
24 public utility. They have ratepayers, they don't
25 have, they're not selling this power -- well, they

1 may be selling it to PG&E ultimately, obviously
2 they have some market-based rate sales.

3 You have to look out for the interest of
4 their ratepayers in this decision, not for their
5 interest, their ratepayers interest. Because
6 they're a public agency, just like you. And to do
7 otherwise, you're abrogating your duties under the
8 Warren-Alquist Act, is the way I read it.

9 I mean, there's not even an application
10 for certification, it says "for any proposed site
11 or related facility requiring a certificate of
12 public convenience and necessity, the Commission
13 shall transmit a copy of the application to the
14 Public Utilities Commission."

15 I've reviewed the date docket log for
16 this case and I cannot find one communication with
17 the Public Utilities Commission in the docket log.
18 So, from my perspective, the whole process is kind
19 of screwed up. Thank you.

20 HEARING OFFICER SHEAN: Okay. Rather
21 than go through an explanation of the Act and the
22 PUC's role in this particular one, I think we'll
23 just move on to the next topic.

24 And I'll be happy to do that off the
25 record if you like -- which is Air Quality. Do we

1 have the people here from the AQMD? Oh, my God,
2 you've got a lot of patience.

3 MR. ROSKEY: Could I ask how long we're
4 going to go tonight?

5 HEARING OFFICER SHEAN: If you like, we
6 can do your direct testimony tomorrow. Other than
7 that, there's limited availability. So we have
8 these folks here from the AQMD.

9 Ms. Peasha has indicated to me that, in
10 terms of the next item, which is the wood stove
11 replacement program, that while she has no direct
12 testimony on that, you are requesting cross-
13 examination of Commission staff on that, is that
14 correct?

15 MS. PEASHA: That's correct.

16 HEARING OFFICER SHEAN: All right. And
17 then your cross-examination of Commission staff
18 regarding the amended proposed conditions. So
19 we're going to try and get at least through that
20 this evening, since our culinary savior has gotten
21 us pizza at 6:30, we're going to gut it out here
22 for awhile.

23 So that's what's going to happen. So, I
24 don't believe you folks have been previously sworn
25 in this proceeding? Were you? Okay, I beg your

1 pardon. Usually I can remember everything. But
2 I've gotten a lot older since that last hearing.
3 I've aged.

4 So, with that, let me know for the
5 record if these witnesses have previously been
6 sworn, and they are being made available at the
7 request of Ms. Peasha, because I think at the time
8 you were last here, she had not received -- and
9 actually, several of us had not received -- the
10 final determination of compliance, which we now
11 understand that you have.

12 And so, with that, if you have questions
13 of these witnesses, please proceed.

14 MS. PEASHA: Mr. Paul Ramsey will be
15 expediting this, by asking and cutting his
16 questions almost entirely to about ten percent of
17 what he had, because we want to expedite this.
18 So, if he may proceed, that would be great.

19 HEARING OFFICER SHEAN: Okay.
20 Understanding we're not doing discovery on the
21 stand here, so let's try to keep it pointed.

22 MR. SARVEY: Thanks for your patience.
23 What percentage of the PM from this tower project
24 is directly emitted 2.5?

25 MS. KENNARD: We didn't analyze that.

1 MR. SARVEY: Thank you. Did you include
2 PM emitted from the cooling tower arriving at the
3 maximum PM 10 impact from this facility?

4 MR. KREBS: Yes, it was included.

5 MR. SARVEY: You also evaluated the
6 emissions in the second phase of the project, is
7 that correct, or is that something that will be
8 done?

9 MR. KREBS: I believe the air quality
10 modeling analysis includes both phases, but we
11 only are licensing, well, we're not licensing,
12 but -- the determination compliance is only for
13 phase one, but I believe the impacts are for both
14 phases.

15 MR. SARVEY: Okay, thanks. All right.
16 Do your regulations allow you to require offsets
17 for the ammonia emissions from this plant?

18 MS. KENNARD: No.

19 MR. SARVEY: That would be the
20 responsibility of the Energy Commission, correct?

21 MS. KENNARD: It's not our
22 responsibility.

23 MR. SARVEY: Thank you. I'm sorry. The
24 ammonia injected into the SCR system is to lower
25 NOX emissions, is that correct?

1 MR. KREBS: That's correct.

2 MR. SARVEY: You can require offsets
3 from NOX emissions from this project, is that
4 correct?

5 MR. KREBS: That's correct.

6 MR. SARVEY: Now, if you require offsets
7 for NOX emissions, but not ammonia emissions,
8 wouldn't air quality be improved by eliminating
9 ammonia slip to five parts per million and
10 requiring additional ERC, so the additional NOX
11 emissions that may occur are from the lower
12 ammonia slip level?

13 MR. KREBS: Our regulations require that
14 the NOX meet the best available control
15 technology, which we determined to be two parts
16 per million. We do not have a back standard for
17 ammonia, therefore we didn't require the lower
18 five PPM standard that you suggested.

19 MR. SARVEY: I believe the question I
20 asked was if you were to require offsets for NOX
21 emissions -- and you can -- and you can't provide
22 offsets for ammonia emissions, wouldn't air
23 quality be improved by limiting the ammonia slip
24 and requiring additional ERC's for the additional
25 NOX emissions that occur from the lower ammonia

1 slip level?

2 MS. KENNARD: We didn't analyze that
3 scenario, so I don't know if it's a yes or a no.

4 MR. SARVEY: Could you do any modeling
5 to determine ammonia concentrations in the project
6 area?

7 MR. KREBS: The toxics analysis that the
8 Applicant performed, and that we reviewed, is a
9 general modeling analysis that would show what the
10 ammonia concentrations would be.

11 MR. SARVEY: Let me clarify that. Did
12 you do any modeling to determine the background
13 ammonia concentrations in the project area?

14 MR. KREBS: No.

15 MR. SARVEY: Thank you. In your
16 professional opinion, are ammonia concentrations
17 higher in the winter or summer?

18 MS. KENNARD: I've never looked at it.

19 MR. SARVEY: What months is your PM-10
20 season in the Sacramento Valley?

21 MS. KENNARD: Basically, the majority of
22 violations are in the wintertime, but there are
23 also summertime violations occasionally.

24 MR. SARVEY: The ERC's from this project
25 allow you to license the project as a new source,

1 and still demonstrate reasonable further progress,
2 is that correct?

3 MS. KENNARD: Correct.

4 MR. SARVEY: Well, to demonstrate
5 attainment you must physically demonstrate that at
6 a monitoring site, correct?

7 MS. KENNARD: Correct.

8 MR. SARVEY: Okay. Now if your
9 currently in non-attainment, and you permit a
10 source with ERC's created, before your attainment
11 plan, won't this further impede your progress
12 towards attainment?

13 MS. KENNARD: When we permit a plant
14 like this we go through a modeling exercise to
15 look at the concentrations, and we determine
16 through the analysis that there would not be
17 significant impact to the attainment.

18 MR. SARVEY: Doesn't the use of ERC's
19 created before your attainment plan actually
20 prevent you from attaining the measurements that
21 you need at the attainment spot, I mean --?

22 MS. KENNARD: Our attainment plan is
23 based on 1990 forward, and all the credits are
24 post-1990.

25 MR. SARVEY: Were you aware that you

1 have two credits that were issued in the late
2 1980's?

3 MS. KENNARD: Your talking the Campbell
4 Soup boilers?

5 MR. SARVEY: Yes.

6 MS. KENNARD: We, basically when we went
7 forward with the plan, there is a one ton a day
8 bank that is carried forward in the plan that
9 takes in account for any ERC's that were granted
10 prior. So we've done an attainment demonstration,
11 getting an extra ton a day of reductions.

12 MR. SARVEY: So in order to permit this
13 plant you had to --

14 MS. KENNARD: We required further
15 controls on other sources, in order to carry the
16 bank to emissions reduction credits forward.

17 MR. SARVEY: So it wasn't accounted for
18 in your attainment plan, then?

19 MS. KENNARD: It was accounted for in my
20 attainment plan.

21 MR. SARVEY: It was accounted for in
22 your attainment plan. Would that act of using
23 those pre-1990 ERC's in any way hamper you toward
24 your attainment?

25 MS. KENNARD: We analyzed the project

1 and did not determine that it wouldn't cause a
2 problem with detainment, so we looked at the
3 project as whole, credits and the project.

4 MR. SARVEY: In your response to
5 comments made by the EPA and the FDOC, you state
6 that "emissions from unpaved roads account for
7 9.15 tons per day of PM-10." Further in your
8 response, you state that the roads that are to be
9 paved by SMUD account for one percent of the total
10 unpaved roads in Sacramento County.

11 You then extrapolate that the ERC's from
12 the road paving should be one percent of the
13 total, or .1 tons per day. Since wintertime PM-
14 10, or road paving emissions are 25 percent of
15 summertime, should not those ERC's have been
16 discounted further?

17 MS. KENNARD: When we go forward and
18 issue the credits for road paving, the seasonality
19 is adjusted on how much credits you issue on a
20 road paving. You get more in the summer, and less
21 in the winter. I mean, we look at it on a
22 seasonality basis.

23 MR. SARVEY: That's good, thank you.

24 HEARING OFFICER SHEAN: All right.

25 Understanding that it was Ms. Peasha who had

1 requested these people return, are there any other
2 brief questions from any other party?

3 MS. HOLMES: We have no other questions.

4 HEARING OFFICER SHEAN: Mr. Roskey?

5 MR. ROSKEY: Just a couple. Are you
6 familiar with the model that they use for
7 forecasting emissions from the plant, forecasting
8 emissions from the stacks?

9 MR. KREBS: Yes.

10 MR. ROSKEY: Can you describe that model
11 for us, briefly.

12 MR. KREBS: Well, the model basically is
13 the ISC, the Industrial Source Complex three.
14 It's a gaussian plume model. I don't really know
15 all the scientifics about it, but it's essentially
16 an EPA guideline model, it's approved and used
17 extensively in this type of permitting.

18 MR. ROSKEY: Are there any other models
19 that are used, or is that the sole approved model?

20 MR. KREBS: Well, this is the standard
21 model. There are some fumigation models,
22 screening models, and a few others -- visibility
23 models. But for normal emissions, criteria
24 pollutant emissions, this is the standard model
25 for a steady state operation.

1 MR. ROSKEY: I assume it's been tested
2 if it's approved? Are you familiar with that at
3 all?

4 MR. KREBS: I make the same assumption
5 that you do. I haven't seen any studies myself.

6 HEARING OFFICER SHEAN: Okay? Anything
7 from the staff.

8 MS. PEASHA: I have one question. Do
9 you know if these road credits are being
10 implemented right now by any pavement going on on
11 the roads that you've chosen?

12 MS. KENNARD: Can I ask, are you asking
13 if they're already going to be paved if SMUD
14 doesn't pave them?

15 MS. PEASHA: Yes, are they in the
16 process at this time, do you know?

17 MS. KENNARD: Is SMUD in the process of
18 paving those roads?

19 MS. PEASHA: Yes.

20 MS. KENNARD: There is a schedule for
21 the road paving, I do not believe it has started
22 yet. Basically, they have to have the roads paved
23 before they can start the plant operation.

24 MS. PEASHA: But you're not aware of any
25 of the roads that are going to be credited, you're

1 not aware that project, that --

2 MS. KENNARD: They have not started
3 construction on the road paving yet. As they pave
4 each road we'll be going out individually as each
5 road is paved and issue the ERC at the end of the
6 road paving.

7 MS. PEASHA: Do you think that, in an
8 area where highly concentrated agriculture, that
9 there would be a more feasible way to get air
10 credits by doing the interest that staff at one
11 time was backing up? Don't -- I mean, you can't
12 pave all the vineyards around here, there's dusty
13 roads all over this place, and for you to do a few
14 roads in this area to me is not taking out what
15 you're putting in by building this power plant.

16 Do you think it would be a wiser idea to
17 implement the fire, low-emission inserts for our
18 fireplaces rather than pave roads?

19 MS. KENNARD: Do you want my personal
20 opinion on that?

21 MS. PEASHA: I want your expert opinion.

22 MS. KENNARD: Well, there's issues with
23 both credits -- all credits have issues with them.
24 And the one issue with the wood stove replacement
25 that would not meet our requirements is, I do not

1 believe you could do enough wood stoves within
2 Sacramento County alone to offset the plant.

3 MS. PEASHA: But you could pave a few
4 roads and offset the --

5 MS. KENNARD: They did more than pave
6 roads. There is a credit package that encompasses
7 a number of different credits, not just road
8 credits.

9 HEARING OFFICER SHEAN: Let me help you
10 out. For a comparable level of credits, road
11 paving versus the program that had been initially
12 discussed earlier by the staff of wood stove
13 replacements, are those close to comparable?

14 MS. KENNARD: If you're looking at a PM
15 2.5 level, then my understanding of what CEC staff
16 did was analyze -- they took the road paving
17 credits, right? And they basically were trying to
18 make sure they were getting a 2.5 for 2.5 credit.

19 Well, there were some miscalculations in
20 the original credit package. It looked like they
21 were short on PM 2.5 when they weren't. So
22 basically they take the road paving credits, and
23 they've basically adjusted them to be equivalent
24 to PM 25, and they've now shown that they have an
25 equivalent mitigation.

1 So I don't know if you can say is one
2 wood stove as much credit as you would get off
3 paving a road? No.

4 MS. PEASHA: How many?

5 MS. KENNARD: I don't know.

6 HEARING OFFICER SHEAN: Okay. I'm
7 trying to help you here, because they want to
8 address this. First of all, is a wood stove
9 replacement an acceptable credit for the district?
10 Do you have a program for that?

11 MS. KENNARD: We do not currently have a
12 program for that.

13 HEARING OFFICER SHEAN: All right. So
14 that is not a --

15 MS. KENNARD: Well, we just don't have a
16 program ourselves that do it. If someone came to
17 us and proposed a wood stove replacement program
18 we would go through the analysis, just like we did
19 with the road paving, and it either would meet all
20 the criteria or it wouldn't. I have never had one
21 proposed to me.

22 HEARING OFFICER SHEAN: Road paving is a
23 known and acceptable means of offsetting PM?

24 MS. KENNARD: Yes.

25 HEARING OFFICER SHEAN: Whereas for now,

1 there is no currently accepted program for wood
2 stove replacement?

3 MS. KENNARD: No one's ever proposed a
4 program for that.

5 MS. PEASHA: Does staff foresee
6 implementing this for a second phase for this
7 plant, would they do that?

8 HEARING OFFICER SHEAN: Well, we'll get
9 the staff witnesses up for that.

10 MS. PEASHA: Oh, okay, I'm just really
11 confused on the fact that credits for road paving
12 in this area can be that quantified, when we have
13 roads all over that --

14 HEARING OFFICER SHEAN: Let me ask just
15 one more question here and we'll draw this to a
16 close. How significant is a 2.5 element -- now
17 let me, let's see.

18 For road paving my understanding, at
19 least in the past, is that largely this has not
20 been for the ultra-fine particulates, but have you
21 found that there is an ultra-fine particulate
22 component in road paving at this 2.5 level that
23 you feel offsets the combustion 2.5 particulates?

24 MS. KENNARD: There is a portion -- PM-
25 10 means any microns ten and lower, which would

1 include two and a half and lower. So basically,
2 if you're trying to take a PM-10 to a PM-25
3 comparison, there is a fraction of it that is PM-
4 25, so you would have to apply whatever that
5 fraction is. I couldn't tell you what that is.

6 HEARING OFFICER SHEAN: Okay. But that
7 is something that has been done, and therefore
8 it's an approved credit?

9 MS. KENNARD: It's my understanding
10 that's what the Energy Commission staff did.

11 HEARING OFFICER SHEAN: Okay. All
12 right. Anything further of these witnesses? We
13 thank you for your patience, and I hope you
14 learned some biology, and thank you very much.
15 Thank you again. Okay, why don't we start with
16 the Commission staff witness?

17 MS. HOLMES: Mr. Ngo and Mr. Layton were
18 sworn and marked.

19 HEARING OFFICER SHEAN: Right.

20 MS. HOLMES: And we offered to bring
21 them back to answer any questions from Ms. Peasha
22 about the changes to staff testimony that were
23 filed on March 12, 2003.

24 HEARING OFFICER SHEAN: Gentlemen, let
25 me remind you you've been previously sworn.

1 MS. HOLMES: Would it be helpful to have
2 a summary of --

3 HEARING OFFICER SHEAN: Why don't you
4 just tell us what you had in mind before, and why
5 you changed it.

6 MS. HOLMES: Matt? Tuan?

7 MR. NGO: Good afternoon. To summarize
8 what we did before, the difference from what we
9 did before, and the one analysis that we did.

10 We did, let me see, one mistake in the
11 calculation of the PM-2.5 portion from the
12 district emission reduction credit, in that the
13 district rules and regulations would require what
14 we call a distance factor with a greater than one
15 to one ratio, and what we didn't do in the errata,
16 what we didn't credit back, is those emissions
17 into the PM-2.5 portion.

18 So, when I find out that we didn't do
19 that, we adjust that one part, so SMUD admissions
20 reduction credit is a little higher than what we
21 originally presented in the FSA.

22 Number two thing that we did different
23 from the errata and the FSA was that we looked at
24 the project only for PM-2.5 portion, and the
25 emission from the facility, instead of just saying

1 -- originally in the FSA we assumed that
2 everything coming out of the gaussian turbine is
3 PM-2.5 -- we've seen some source test results that
4 indicate the fraction of PM-2.5 from the gaussian
5 turbine is probably about 95 percent of the PM-10.

6 So we adjust that number. By doing
7 that, the reliability of the project PM-2.5
8 emission is reduced. We also discount the
9 emission reduction credit from the road paving.

10 Instead of just taking the road paving
11 PM-10 and using it for PM-2.5, we only use the PM-
12 2.5 portion of the PM-10, and evaluate it with the
13 project liability, and then the end result was
14 that -- if I can refer you to air quality table
15 eight and table nine, what we see that, I'm sorry,
16 of the errata -- what we see there is we see this
17 surplus of emission reduction credit for PM-2.5 of
18 13,567 pounds, and we see a shortfall of 3,517
19 pounds for the fourth quarter.

20 And we know that the problem with PM-2.5
21 in the Sacramento area is typically in the
22 November, December, and January, in those three
23 months. So, the November and December was in the
24 fourth quarter. And then the January will be in
25 the first calendar quarter.

1 So what we did, we adjusted the
2 shortfall in quarter four by two-thirds in air
3 quality table nine, and then we credited the one-
4 third of the surplus in quarter one. And the end
5 result was that the emission liability for the
6 project and the emissions reduction credit for the
7 project was mitigated -- you know, was showing a
8 slight surplus in terms of emissions reduction
9 credit.

10 Because of that, the need for staff to
11 recommend mitigation for wood stove are no longer
12 justified, and so we withdraw that condition.

13 HEARING OFFICER SHEAN: Did you
14 understand his answer?

15 MR. SARVEY: Yes, I did.

16 MS. PEASHA: Sure did.

17 HEARING OFFICER SHEAN: Do you have any
18 questions of him?

19 MR. SARVEY: Yes, I do.

20 MS. PEASHA: I have one before we --
21 well, do you foresee that we have air quality
22 credits for the second phase of this project?

23 MR. NGO: You know, I don't think we see
24 any information whether they have any credit
25 available for second phase yet, but if SMUD is

1 going to build the second phase they will have to
2 work very hard to get the emissions reduction
3 credit. Everything we do here in the FSA and the
4 errata only deal with phase one.

5 MS. PEASHA: Would the staff implement
6 low emission inserts for the second phase if they
7 needed to, in your opinion?

8 MR. NGO: If they don't have enough
9 emissions reduction credits for PM-2.5, and if the
10 district has not adopted a rule to require the
11 replacement of all the wood stoves, then we
12 probably would recommend them again.

13 MS. PEASHA: In your opinion, as far as
14 road paving credits and low emission inserts,
15 which has more benefits?

16 MR. NGO: I need to have you repeat the
17 question.

18 MS. PEASHA: Okay. Take low emission
19 inserts and road pavement credits -- which would
20 benefit this valley's air quality more in your
21 opinion?

22 MR. NGO: Oh, I see. I don't think you
23 can compare the two, because what we did with the
24 PM-10 are, the particulate emission from the road
25 paving we already adjusted down from the PM-2.5,

1 so the PM-2.5 is, according to the -- they might
2 have different chemical characteristics, but they
3 will classify as PM-2.5, so it's the same.

4 So it doesn't matter whether you do the
5 wood stove or whether you do the road paving, you
6 know, really there's no difference.

7 MS. PEASHA: So, in other words, the
8 polluting gases put up by wood stoves or
9 fireplaces is hypothetically the same as dust that
10 comes off a road in the wintertime when it's
11 raining?

12 MR. NGO: In terms of chemical
13 characteristics?

14 MS. PEASHA: Yes.

15 MR. NGO: No. But in terms of physical
16 appearance, yes. And you got to understand that
17 the reason why -- I want to add in a little bit
18 here -- the reason why we are looking at the PM-
19 2.5 here is because of the suspendability of the
20 particulate in the air, in the atmosphere.

21 And with PM-2.5, it stays in the air a
22 little longer, and it can carry farther away, in
23 addition to impacting the local area. So that's
24 why we are looking at the PM-2.5.

25 Now, again, as long as they are in the

1 PM-2.5 range, they would have the same
2 suspendability in the atmosphere, so by reducing
3 one or reducing another -- as long as they have
4 PM-2.5 -- then we don't have any problem.

5 MS. PEASHA: But wouldn't you agree that
6 the PM-2.5's off of a dirt road are going to be
7 less of an impact if in fact the roads are wet
8 during the wintertime, and yet we're burning our
9 stove and we're putting pollutants, you know,
10 carcinogens, into the air?

11 MS. HOLMES: I'd like to offer, just a
12 comment at this point. And that's that Mr. Ngo is
13 testifying -- as he tried to make clear -- about
14 what's defined as PM-2.5, which is defined by size
15 for purposes of air quality, his air quality
16 analysis.

17 The discussion of differential health
18 impacts that can come from different compositions
19 of PM-10 or PM-2.5 is an issue that we can and
20 likely will address when Mr. Ringer testifies, in
21 providing rebuttal testimony to Mr. Roskey's
22 testimony. So perhaps we could defer the
23 questions of composition of PM-2.5 to that point.

24 HEARING OFFICER SHEAN: But I think Mr.
25 Ngo had her question in mind, and is ready to

1 answer it, is that correct?

2 MR. NGO: After I heard Karen I forgot
3 what the question was, I'm sorry. So, can you
4 repeat the question?

5 MS. PEASHA: Sure, the PM-2.5 from the
6 road, as opposed to PM-2.5 from a fireplace, which
7 one is putting off more pollutants? In your
8 opinion, would one benefit more than the other?

9 HEARING OFFICER SHEAN: I think he's
10 already given you the answer to that, right? I --

11 MR. NGO: Now I think I understand the
12 question. That was your previous question that I
13 already answered, and then your second question
14 was something about the wintertime, is that right?

15 MS. PEASHA: That's correct. Thank you.

16 MR. NGO: Now in wintertime, the reason
17 why I don't look at the wintertime is because the
18 district, when they calculate the PM-10 emissions
19 reduction credit, they already take into account
20 the emission from the wintertime which they said -
21 - and I looked at their calculations-- are less
22 than normal summertime.

23 And now, just for your own benefit, or to
24 understand what the sustainability of the dust, is
25 that even in wintertime you're not eliminating all

1 fugitive dust, because what you do is, say when
2 you're driving on a dirt road, and you're going to
3 take some of the clay onto the paved road itself,
4 and then some other car runs over it, and it will
5 be an additional source, so it will make up for
6 those.

7 Although the overall result, in the
8 wintertime the emission from fugitive dust will be
9 less than you would see in normal dry periods.

10 MS. PEASHA: Thank you.

11 MR. NGO: Your welcome.

12 MR. SARVEY: Uh, Mr. Layton, did you
13 prepare the FSA, or did you just participate in
14 the addendum to the FSA?

15 MR. LAYTON: I worked with Tuan in
16 preparing the addendum, and I also reviewed the
17 FSA.

18 MR. SARVEY: But your name is not --

19 MR. LAYTON: My name is not on the FSA.

20 MR. SARVEY: Is there a reason why it's
21 not on the FSA?

22 MR. LAYTON: I guess I wasn't expecting
23 to be a witness at that time.

24 MR. SARVEY: Okay. Now, in the FSA in
25 table nine, you identify 27,123 pounds of directly

1 emitted PM-10 that requires a wood stove program.
2 Was this to offset a significant unmitigated
3 impact under CEQA?

4 MR. NGO: Are you asking me or are you
5 asking Matt?

6 HEARING OFFICER SHEAN: Who do you want
7 to ask?

8 MR. SARVEY: Both of you.

9 MS. HOLMES: What was the question
10 again?

11 MR. SARVEY: Okay, I'll repeat it. In
12 the FSA, in table nine -- so pull out both table
13 nines, because that's what all these questions are
14 going to be about -- in the FSA, in table nine,
15 you identified 27,123 pounds of unmitigated PM-10
16 that requires a wood stove program. Was this to
17 offset a significant unmitigated impact under
18 CEQA?

19 MR. LAYTON: Mr. Sarvey, could you tell
20 us where the 27,000 is?

21 MR. SARVEY: If you add the deficit that
22 you have on the bottom of the table there -- 612,
23 10,036, 17,041, and 14,701?

24 MR. LAYTON: Would that be closer to
25 41,000?

1 MR. SARVEY: You've got a better
2 calculator than I do.

3 MR. LAYTON: Okay, we're talking about
4 the deficit numbers in the second to last row?

5 MR. SARVEY: Right. So it's supposed to
6 be 41,000. Thank you for the correction, Mr.
7 Layton. My question was, is this considered an
8 unmitigated impact under CEQA, and that's why you
9 proposed the wood stove before you did your
10 recalculations, is that correct?

11 MR. NGO: Yes.

12 MR. SARVEY: Thank you, Mr. Ngo. Now,
13 you estimate that the project's ammonia emissions
14 could convert to 800 to 1,400 pounds per day of
15 secondary PM-10, which is 511,000 pounds per year.

16 Now isn't that, since it's 18 -- well,
17 it's not 18 any more -- since that's ten times
18 larger than the figure you have previously
19 identified as unmitigated PM-10, isn't that also
20 an unmitigated impact under CEQA?

21 MS. HOLMES: I'm wondering if we're now
22 moving beyond staff's revised testimony? We don't
23 have a problem with questions about any of the
24 changes that were made, but there were no changes
25 to staff's recommendations with respect to ammonia

1 slip from the FSA to the supplement.

2 MS. PEASHA: But you went from
3 implementing stoves, in four days, to not
4 implementing stoves.

5 MS. HOLMES: And that was based on the
6 particulate emissions of the project.

7 HEARING OFFICER SHEAN: I think we're
8 going to allow a little bit of latitude, because I
9 believe -- if I'm getting this and hopefully I
10 do -- what they're trying to determine is, if you
11 had an unmitigated CEQA impact over here that
12 related to PM-10 emissions --

13 MR. SARVEY: 41,000 pounds.

14 HEARING OFFICER SHEAN: -- now you had
15 another proposal in your package for further
16 ammonia slip mitigation, if, for example, the
17 Commission did not buy that, would further
18 mitigation through this stove proposal address
19 your, you know, the effects of the ammonia slip?

20 MS. HOLMES: Staff addressed in March
21 the question of why we weren't recommending
22 offsets for ammonia slip, and I'm happy to have
23 them reiterate that testimony if that's going to
24 be helpful to the committee.

25 HEARING OFFICER SHEAN: I understand.

1 We're just going to give him a little bit of
2 latitude.

3 MS. PEASHA: Thank you.

4 MR. NGO: Well, the figure, the 2.5
5 figure that you quote, was based on a potential 10
6 ppm ammonia continuously day in day out every hour
7 of operation for the project for the whole year.
8 And it's a great potential. And that's why we
9 recommend that the condition, recommend SMUD to
10 maintain the ammonia slip at five ppm.

11 Now, when you look at the five ppm, it
12 doesn't mean that the project will be at five ppm.
13 We have reason to believe that it will be
14 overrated at one or less ppm ammonia, and so, due
15 to the uncertain of all these things and all of
16 the, you know, the small amount of 2.5 that we're
17 converting, we're not recommending mitigation for
18 ammonia.

19 We also, another reason that we don't
20 recommend mitigation for ammonia -- this reason is
21 less important than the previous one -- because
22 ammonia is not an identified criteria air
23 contaminant. And when you look at my analysis,
24 the FSA, we are dealing only with criteria air
25 quality -- I mean criteria air contaminant.

1 And so, to answer your question, there
2 will be some particulate converting from the
3 ammonia, but if SMUD will be able to live with
4 that condition on the five ppm ammonia slip
5 recommended by staff, I think it will be okay.

6 MR. SARVEY: My only question was, why
7 it was significant at 41,000 pounds and 511,000
8 pounds is not significant?

9 MR. NGO: Oh, you want me to explain --

10 MR. SARVEY: No, that's okay. I'll move
11 on. I've got a lot more questions and we want to
12 get out of here. Okay, on page one of your
13 supplemental testimony submitted March 12, you
14 testified that in other CEC siting cases staff has
15 evaluated the sufficiency of mitigation without
16 discounting offsets based on location.

17 What triggered this change in the
18 approach from the FSA?

19 MR. NGO: Your question, again? What
20 change from the FSA?

21 MR. SARVEY: Why, in the FSA to this
22 addendum, did you decide to drop the distance
23 ratio, basically, is the bottom line of the
24 question?

25 MR. NGO: Okay. Again, when you look at

1 the suspendability of PM-2.5, PM-2.5 stays in the
2 atmosphere for a long time. The project will
3 cause localized and regional PM-2.5 impact.

4 And what we did with the analysis -- I
5 don't think we did anything different from the FSA
6 and the errata in terms of distance ratio --
7 again, I already testified earlier that we made a
8 mistake -- of not give back the discount the
9 district impose on the emissions reduction credit
10 to SMUD, and we recalculated.

11 And so, let me use an example. Say if
12 SMUD have 12 pounds of emission reduction credit,
13 of PM-10, and the district requires a distance
14 factor of a discount of 20 percent, so they can
15 only use ten pounds of that to mitigate ten pounds
16 of emission from the facility.

17 And what I did originally in the FSA
18 was, I took that 10 pounds straight from the FDOC,
19 and calculated and used that in all the tables in
20 the FSA. What I should have done is, I have to
21 give them back that discount factor. And I did
22 that in the errata. Am I --

23 MR. SARVEY: I'm not quite clear. My
24 question essentially is why didn't you apply a
25 distance ratio to the 2.5 is basically what, on

1 your second table?

2 MR. LAYTON: As a standard practice,
3 staff does not apply a distance ratio. The staff
4 is responsible for mitigating the project,
5 district's are responsible for a programmatic
6 approach where they do need the distance ratio,
7 the 20 or 50 or sometimes 100 percent discount for
8 their program.

9 But, again, staff is looking at the
10 CEQA, just the project, and so before and after.

11 MR. SARVEY: Okay. And in air quality
12 table seven in the FSA you first apply distance
13 ratio siting district NSR Rule 202. Isn't this
14 inconsistent?

15 MS. HOLMES: Are you referring to table
16 seven in the FSA?

17 MR. SARVEY: In the FSA, correct.

18 MR. NGO: Those are the distance ratios
19 that were determined by the district. That number
20 one is the distance ratio. Number two is that the
21 Applicant had provided what we call a photo
22 chemical modeling analysis to show what the
23 effective -- in terms of reducing a certain amount
24 of VOC, of volatile organic compounds -- to
25 mitigate the ozone contribution from the project

1 NOX emission, and they came up with a 2.6.

2 And that's what I said in there. Again,
3 the mistake there, what I did was that I should
4 have given them back the 1.2 or 1.5 or whatever
5 distance ratio the district required.

6 MR. SARVEY: So, essentially you made
7 the same mistake in air quality table seven?

8 MR. NGO: Yes.

9 MR. SARVEY: Okay.

10 MR. LAYTON: Well, table seven is
11 actually for LORS compliance. So, to comply with
12 the district rules they need to apply the distance
13 ratio. If we took the distance ratio out they
14 would just have more NOX than was required by us.
15 But this table is purely for compliance with the
16 district's rules.

17 And, remarkably, with the distance
18 ratio, they comply with our rules at the same
19 time. But if you want us to take them out we
20 could. It would just show that there would be a
21 surplus at the end.

22 MR. SARVEY: No, actually I was wanting
23 the other direction, but that's okay.

24 MR. LAYTON: The math doesn't work that
25 way.

1 MR. SARVEY: Now, I've participated in
2 several siting cases, and what siting case can you
3 mention where the distance ratio was not applied
4 to gauge the adequacy of proposed mitigation?

5 MR. LAYTON: I'm not sure I --.

6 MR. SARVEY: Well, you stated in this
7 thing that in other cases staff had not applied
8 the distance ratio. In every case that I've
9 worked in they have applied the distance ratio, in
10 every single category.

11 MR. LAYTON: To evaluate LORS
12 compliance, yes.

13 MR. SARVEY: To evaluate LORS
14 compliance, to evaluate impacts, to evaluate
15 everything, they've always used the distance
16 ratio, in every single case. So I'm just asking
17 you what case can you cite where they have not
18 done that?

19 MR. NGO: Actually I should make the --
20 what you said we do in the distance ratio we did
21 not actually do in the distance ratio. What we
22 did there, and what we're trying to find out, is
23 the effectiveness ratio in terms of a powder
24 emission over here in a certain area, how
25 effective that one powder emission is to, in terms

1 of mitigating the contribution of the project.

2 And that's what we did. We did not do
3 the distance factor, actually.

4 MR. SARVEY: I'm not sure I understand
5 that.

6 MR. LAYTON: I think Mr. Sarvey and Mr.
7 Ngo are both referring to the East Altamount case,
8 and that was not a distance ratio, it was
9 effectiveness, as Mr. Ngo referred to. The
10 distance ratio wouldn't even be appropriate in
11 that particular case because those offsets
12 couldn't come in to that particular basin.

13 MR. SARVEY: But I was also in the Tracy
14 Peak Room, and I've also participated in --

15 MR. LAYTON: And some of those --

16 MR. SARVEY: -- a couple others, I've
17 never seen a situation where that --

18 MS. HOLMES: Can you please not have him
19 argue with the witness, but simply ask a question?

20 HEARING OFFICER SHEAN: Let's either ask
21 a question or --

22 MR. SARVEY: Okay. Now, another
23 question I have, how can surplus ERC's in one
24 quarter be allowed to offset emissions in another
25 quarter?

1 HEARING OFFICER SHEAN: And can I ask
2 you, in your mind, what the connection is there to
3 the topic we're dealing here, which is the move
4 off of the wood stove replacement program?

5 MR. SARVEY: Because in air quality
6 table nine they have addressed the shortfall by
7 crediting emissions from another quarter, that's
8 how that comes into play. I don't understand that
9 concept under CEQA.

10 MR. NGO: I understand your question
11 now. It's not the point -- the reason why we
12 identify quarters, quarter one, two, three or
13 four, is so that you can reference back to the
14 district document so that everybody can compare
15 the math. What we really look at is the emission
16 and the impact from the project and the problem
17 time in this area.

18 And the problem time in this area is
19 November, December and January. So, I should look
20 at those three months. And then, again, for
21 quarter one and quarter four, there are two months
22 of the problem time in quarter four, and one month
23 of problem time in quarter one. And that's why I
24 just used that window.

25 So, again, the quarter number is

1 strictly for referencing purposes.

2 MR. LAYTON: Also Mr. Sarvey, in the
3 Sacramento District, their rules allow shifts
4 between the ozone season quarters and the PM
5 season quarters. So the first and fourth can
6 exchange, and the second and third can exchange.

7 MR. SARVEY: Does CEQA allow that?

8 MR. LAYTON: Well, I think we do place
9 some merit on what the district does and their
10 analysis and their efforts to reach attainment.
11 Obviously, we're not all satisfied, but we do
12 appreciate what they did.

13 MR. SARVEY: Now, looking at both air
14 table nine version one and version two, in air
15 table version two -- which is in the addendum --
16 for concrete ink you have a note there that you
17 reduced the portion of PM-10 which is 31 percent
18 by an EPA AP42 air pollution compilation factor,
19 is that correct?

20 MR. NGO: Yes.

21 MR. SARVEY: And then you also did it
22 again for American River asphalt. The road paving
23 ERC and the surplus SOX ERC SPM, correct?

24 MR. NGO: Yes.

25 MR. SARVEY: Can you explain to me why

1 you did not speciate the PM-2.5 and the PM-10 for
2 Campbell Soup, Poppy Ridge, Blue Diamond, Proctor
3 & Gamble and Grace Industries when they represent
4 52 percent of the emission reduction credits here,
5 and you don't for the others?

6 MR. NGO: Those are the combustion-
7 generated particulates, and because they are
8 combustion they are in the same type of emission
9 from the gas turbine, and therefore we used
10 straight.

11 MR. SARVEY: Okay, so you discounted the
12 project's emissions by five percent, but you
13 didn't discount any of those emissions by five
14 percent. Are you saying that these are 100
15 percent PM-2.5?

16 MR. NGO: For PM-2.5, yes.

17 MR. SARVEY: Do you have an AP factor to
18 back that up, Mr. Ngo?

19 MR. NGO: Not AP, this is based strictly
20 on my experience from looking at test results,
21 rather than -- I can't cite a reference here. And
22 in hindsight, well, if I could have had some time
23 to work on my own paper to show what the fraction
24 of the PM-2.5 for the gas turbine then I could
25 reference it here, but like I say, this one is

1 pretty much new information that we, that the
2 staff of the CEC is fortunate enough to have, and
3 we just kind of make a really quick look and a
4 quick analysis and then say, okay make the
5 decision and use it, right there.

6 MR. SARVEY: So your testimony is that
7 those ERC's that I have just mentioned are 100
8 percent PM-2.5?

9 MR. NGO: Yes.

10 MR. SARVEY: On the road paving credit
11 ERC, which has the number four, you applied an
12 adjustment of 15 percent for the PM-2.5 portion?

13 MR. NGO: Yes.

14 MR. SARVEY: Did you also apply any
15 factor for the seasonality of that particular
16 credit, and reduce it for that?

17 MR. NGO: I didn't say it there, but
18 actually I did. The reason is the number from the
19 district for road paving already accounts for the
20 seasonality, so by applying the 15 percent across
21 all the quarters then I already did account for
22 the different emissions in quarters, the
23 seasonality.

24 MR. SARVEY: That's it. Thanks.

25 HEARING OFFICER SHEAN: Okay. Any

1 redirect?

2 MS. HOLMES: Does Mr. Roskey have any
3 questions?

4 HEARING OFFICER SHEAN: I'm sorry. Mr.
5 Roskey, do you have anything? You don't have to
6 dredge it up if you don't have it.

7 MR. ROSKEY: I just have a brief
8 question. My understanding from your testimony
9 and from what I've read is that you're simply
10 satisfying existing laws and regulations, rules?
11 That if there was any health requirement that was
12 not addressed by these rules that you would not
13 consider that?

14 MR. NGO: When you say health
15 requirements you're talking about public health?

16 MR. ROSKEY: Yes. Resulting from
17 emissions.

18 MR. NGO: My analysis, my conclusions,
19 were based on three things, actually, three
20 general conclusions that I like to draw from.
21 Number one, that the project will apply with all
22 applicable laws and rules and regulations.

23 Number two, the project would be built
24 with best available, most effective control
25 technology -- I wouldn't want to use the word

1 "best available", because that's a district rule.

2 And number three, that we have reason to
3 believe that the project will perform as we expect
4 it. And that's what I draw my conclusion on.

5 And, in terms of having the health effect, I don't
6 think I'm qualified to answer your question. That
7 would be under public health.

8 MR. SARVEY: Can I get just one more
9 question in?

10 HEARING OFFICER SHEAN: Yes.

11 MR. SARVEY: The Proctor & Gamble ERC
12 that you quote is the shutdown of a detergent
13 manufacturing process. The PM-10 sources from the
14 shutdown were either detergent spray, drying
15 operations, or from material unloading, conveying,
16 mixing, and bagging operations. Does that sound
17 like 100 percent PM-2.5 emissions?

18 MS. HOLMES: Excuse me, can I just ask
19 where he's reading from?

20 MR. SARVEY: Oh, I'm sorry, it's the
21 FDOC.

22 MR. SARVEY: Are you testifying that
23 that's 100 percent PM --?

24 MR. NGO: Yes. We verified with the
25 district twice -- I'm sorry, three times on that.

1 And I have the same question you have.

2 MR. SARVEY: Material unloading,
3 conveying --

4 MR. NGO: Listen to me now. The one
5 from drying and the one from conveying and stuff
6 like that and transporting, those are minority
7 portions of the total emission reduction credit
8 that the district issued to Proctor & Gamble.

9 The majority part of the emission on 99
10 percent of the emission from that emission
11 reduction credit comes from the thing we call the
12 dryer. And then the dryer is a combustion source,
13 it heats something to generate that hot air to
14 suspend these things to dry them out.

15 And after it exhausts, it does not
16 exhaust directly to the atmosphere, it exhausts
17 through an electrostatic precipitator, and when
18 they shut down that source, what you have there is
19 the emission coming off from an electrostatic
20 precipitator, so therefore the particulate
21 emission from that facility will be purely PM-2.5.

22 I verified that with the district.

23 MR. SARVEY: The salt spray as well was
24 PM-2.5?

25 MR. LAYTON: Mr. Ngo has already said

1 that there is some components that are salt spray.
2 There may be ten --

3 MR. SARVEY: It's not speciated out in
4 your table, that's the question.

5 MR. LAYTON: No, nor is it delineated in
6 the discussion that's in that FDOC.

7 MR. SARVEY: Thank you.

8 HEARING OFFICER SHEAN: Now I guess we
9 can go into your redirect.

10 MS. HOLMES: Yes, I have a few
11 questions. Turning back to the discussion that we
12 had earlier this evening on ammonia slip emissions
13 -- either Mr. Ngo or Mr. Layton -- if you were to
14 compare your estimates of potential particulate
15 emissions from ammonia slip to the emissions that
16 you identified on table nine of the supplement,
17 which set of numbers do you regard as more
18 certain?

19 MR. LAYTON: The numbers on table nine
20 are actually directly emitted PM-10 from the
21 project. The ammonia to PM-10 or to PM-2.5 is a
22 conversion, and that conversion is very variable
23 and very speculative.

24 So I guess the numbers would be the
25 numbers that Mr. Sarvey had suggested, the 511,000

1 pounds, would be very speculative and based on the
2 worst case of 10 ppm and a high conversion rate,
3 but we don't see that conversion rate being there
4 all the time.

5 The numbers shown on table nine are the
6 directly emitted PM-10 based on source tests.

7 MS. HOLMES: And the staff's decision to
8 not require offsets for the particulate formation
9 from ammonia slip was based on its concerns about
10 the speculative nature of the conversion?

11 MR. LAYTON: Yes.

12 MS. HOLMES: I'm not sure, Mr. Layton,
13 you got a chance to answer fully the question
14 about staff's not using distance ratios in other
15 cases.

16 Can you give an example of a case where
17 staff decided that it was inappropriate to use a
18 distance ratio for offsets that were provided
19 pursuant to district rules when staff was
20 evaluating impacts under CEQA?

21 MR. LAYTON: I guess I still disagree
22 with Mr. Sarvey. We always evaluate the distance
23 ratio for LORS compliance, but again, I think
24 there's a pretty consistent basis that we will
25 give the project the credit of a distance ratio

1 when we're trying to come up with whether the
2 impacts are mitigated fully by the offsets
3 provided.

4 And again, the offsets are generally
5 more than what's directly emitted emissions, so
6 there's always a surplus. And we generally do use
7 that surplus for taking care of some of the SOX
8 requirements, perhaps.

9 Because the district rules are more
10 limited, they're only looking at NOX or VOC's.
11 Oftentimes SOX don't rise to the level of
12 threshold for offsets by the district rules, and
13 so we will mitigate all the emissions using the
14 ERC's provided for, say, just a few pollutants.

15 MS. HOLMES: So it would be your
16 testimony that table nine in the supplement is
17 consistent with the other cases that the CEC has
18 reviewed, and that the table nine in the FSA is
19 not?

20 MR. LAYTON: Correct.

21 MS. HOLMES: There was a discussion
22 earlier this evening about using the same
23 percentage -- let me see if I can rephrase this so
24 it makes a little more sense. In table nine in
25 the supplement, staff discounted the project's

1 direct emissions by five percent, is that correct,
2 to capture the PM-2.5 portion?

3 MR. LAYTON: Yes.

4 MS. HOLMES: And there was a question
5 earlier this afternoon about whether or not staff
6 similarly discounted some of the ERC sources,
7 including Poppy Ridge and Blue Diamond. Do you
8 recollect that discussion?

9 MR. LAYTON: Yes, we just had it.

10 MS. HOLMES: If you were going to apply
11 the same discount to those sources, do you have a
12 sense of the magnitude of the change that it would
13 make in the numbers that you would reach at the
14 bottom of the table?

15 MR. LAYTON: I think it would reach
16 about five percent. But, as Mr. Ngo had
17 testified, he has talked to the districts, and
18 some of these are actually closer to 100 percent,
19 so we did not discount them. But it would be a
20 minor change on the bottom line, on deficit or
21 surplus, and we do not think it's significant.

22 MS. HOLMES: And finally, in response to
23 some questions that Mr. Roskey asked, does staff
24 evaluate whether or not a project is going to
25 cause a significant air quality impact in its

1 analysis?

2 Mr. Ngo had mentioned LORS compliance
3 and back determinations, and I'd like to know
4 whether or not the staff analysis also includes an
5 analysis of whether or not the project includes
6 significant adverse impacts under CEQA?

7 MR. LAYTON: Yes, it does.

8 MS. HOLMES: And is that analysis based
9 on adopted ambient air quality standards?

10 MR. LAYTON: Yes.

11 MS. HOLMES: And do you know whether or
12 not those ambient air quality standards are
13 health-based?

14 MR. LAYTON: Yes, they are.

15 MS. HOLMES: Thank you. Those are all
16 my questions.

17 HEARING OFFICER SHEAN: Okay. Any
18 recross?

19 MR. ROSKEY: Okay, you said there were
20 health standards. Could you elaborate on that?

21 MS. HOLMES: The question I asked him is
22 whether or not the ambient air quality standards
23 were health-based, and his answer was yes.

24 MR. ROSKEY: May I ask then please what
25 health-based, whatever it is you're talking about

1 that you're basing these things on?

2 MS. HOLMES: Well, you can ask them if
3 they know. We have a public health witness who'll
4 be available later this evening that can talk
5 about the process that EPA and CARB both use to
6 determine health effects when adopting standards.
7 If you'd like to ask them if they know that's
8 fine.

9 MR. LAYTON: Well, our analysis is based
10 on, does the project -- the impact analysis looks
11 at whether the project contributes to existing
12 violations of those ambient air quality standards.
13 Those ambient air quality standards are health-
14 based, and therefore violations of those would
15 have negative health effects.

16 First and foremost, a project that we're
17 analyzing cannot cause a new violation of a
18 health-based standard, whether it's for NOX, PM-
19 10, or SOX. But also we try to mitigate the
20 project such that it does not contribute to
21 additional violations.

22 So, with respect to the ambient air
23 quality standard for PM-10 and, we hope, for PM-
24 5 -- there's not a standard in place yet -- well,
25 there's not an attainment determination yet for

1 ambient air quality for PM-2.5.

2 Anyway, this project's impacts relative
3 to those standards are fully mitigated. Yes, the
4 area is in violation of 2.5, possibly 2.5, and is
5 in violation of the PM-10 standards, which are
6 health-based.

7 MR. ROSKEY: I will ask your health
8 expert, thanks.

9 HEARING OFFICER SHEAN: Okay. Thank
10 you. And for these witnesses, I thank you
11 gentlemen, you are excused. All right. Why don't
12 we take about a 20 minute --. Oh, okay, knock it
13 out quickly here.

14 MR. BOYD: Mike Boyd, CARE. My comment
15 is -- staff's heard this probably a number of
16 times before. That's why I didn't provide,
17 really, any testimony on it.

18 But once again, my understanding is, the
19 duties of the Commission are defined under CEQA in
20 the Warren-Alquist Act, and most of what the
21 experts that have been testifying about are mainly
22 about the district's responsibilities, which my
23 understanding are under federal and state law.
24 The health and safety code, for example, for the
25 impacts of air quality on public health.

1 But my understanding of CEQA is that
2 CEQA requires that you mitigate this project's
3 emissions to the maximum extent feasible. To me
4 that means that you should be using a different
5 emission control technology.

6 The technology that's proposed is
7 selective catalytic reduction using the ammonia
8 reactant for the catalyst. And oxidation
9 catalyst. Now my understanding is that by using
10 SCONOX you can achieve lower emission levels, 1.3
11 parts per million NOX, two parts per million CO,
12 and eliminate 70 percent of the volatile organic
13 compounds just by using SCONOX, and eliminate the
14 need to use ammonia as a reactant, and thereby
15 eliminate the formation of secondary particulate
16 matter, which is predominantly in the form of
17 ammonia nitrate, which is particulate matter of
18 two and a half microns or less.

19 So, your duty isn't to fulfill the
20 district's responsibility in making sure that the
21 project complies with the Clean Air Act, your duty
22 is to ensure that it complies with the California
23 Environmental Quality Act, which requires that you
24 have mitigation of the impacts to the maximum
25 extent feasible.

1 And it's CARE's opinion, and it's
2 continually been our opinion, that SCONOX is the
3 only technology that provides that right now. And
4 that's my comment. Thank you.

5 HEARING OFFICER SHEAN: Okay. Thank
6 you, Mr. Boyd. Our angel of food has set
7 everything out, so let's take about a 20 minute
8 break, and that will get us recharged. Then we'll
9 come back and do Mr. Roskey's cross of staff
10 regarding the proposed condition changes, and then
11 we'll have a little --
12 (Off the record.)

13 HEARING OFFICER SHEAN: Back on the
14 record. Thank you, Bonnie, again.

15 COMMISSIONER PERNELL: Thank you,
16 Bonnie.

17 HEARING OFFICER SHEAN: Let the record
18 show that that was a unanimous thank you Bonnie.
19 Everyone in the room, we would have wilted long
20 ago without you. All right, we're going to resume
21 now.

22 And during our little break the
23 committee has asked a few questions and basically
24 think we can conclude this this evening, because
25 the logistics of bringing everybody back for a

1 very short hearing seems to be a misuse of time
2 and resources, so if we can get that done we're
3 going to do it.

4 And with that, the next item on the list
5 is for Mr. Roskey to cross-examine the staff with
6 regard to the amended proposed conditions.

7 MS. HOLMES: No, I'm sorry the staff
8 witnesses just left. He asked his questions
9 before. Remember I asked -- you asked if I had
10 redirect and I said Mr. Roskey needs to go next,
11 and he did ask one or two questions.

12 HEARING OFFICER SHEAN: Well, what is
13 Mr. Ringer here for then?

14 MS. HOLMES: He's here for rebuttal to
15 Mr. Roskey's testimony on public health.

16 COMMISSIONER PERNELL: Then that's
17 what's going to happen, I think.

18 MR. ROSKEY: That's agreeable to me.

19 HEARING OFFICER SHEAN: Is that
20 agreeable to you? Thank you. Then we have Mr.
21 Roskey's direct, is that right? And we'll move to
22 that.

23 MR. ROSKEY: Okay, somebody help me with
24 the protocol here, what am I supposed to say. I
25 guess I can introduce myself, my name is Mike

1 Roskey. Is there anybody working the microphones?

2 HEARING OFFICER SHEAN: We're about to
3 get that again here.

4 MR. ROSKEY: Thank you. I live in the
5 area. I live on Alta Mesa Road. I'm interested
6 in the outcome of these hearings precisely because
7 of that. I have some concerns as a person who is
8 not really totally involved in any of the
9 scientific issues here.

10 I don't have a specifically strong
11 science background, although I do have plenty of
12 statistics, and I've read in several of the issues
13 that pertain to what are the -- at least on a
14 casual basis -- the issues that affect public
15 health, specifically pertaining to air pollution
16 and emissions.

17 Because I'm concerned about this I do
18 work as a researcher for the Employment
19 Development Department. I have a Ph.D. in
20 Sociology from the University of California at
21 Irvine, so I'm familiar with research methods and
22 so on. I'm not exactly impressed with the
23 literature I've read here, although I can't say
24 I've read all of it.

25 But I have tried mightily to do so. I

1 took a week off last week to read this stuff.

2 What else do I need to tell you?

3 HEARING OFFICER SHEAN: Probably
4 nothing. I'll try to help you, and we have Ms.
5 Mendonca here, and if I fall down on the job --
6 and I hope and don't believe I will -- we have two
7 filings from Mr. Roskey that have been previously
8 docketed and were timely filed.

9 One is entitled "Michael Roskey's
10 Testimony" and it's composed of an unnumbered
11 number of pages, but the fax machine showed there
12 to be eight. And in addition to that, another
13 document entitled "Intervenor Mike Roskey's
14 Tentative Exhibit List" and that contains
15 Exhibit's R1 through R16. And each of those
16 Exhibits is identified and attached to that
17 document.

18 I spoke to -- just for the purposes of
19 the record -- I spoke to Mr. Roskey during our
20 break and asked him if he was going to attempt to
21 qualify himself as an air quality or air
22 quality/public health expert based upon his
23 experience and education, and he indicated to me
24 that he was not.

25 Mr. Roskey then, would be what -- in

1 past experience at the Commission -- we would call
2 a highly informed citizen who has something
3 important to say. And so, without his attempting
4 to qualify himself as an expert, we were going to
5 at least allow him to offer his testimony on that
6 basis. And so, with that -- and have you been --
7 let me just verify that you were sworn in when we
8 did that earlier this morning.

9 MR. ROSKEY: No.

10 HEARING OFFICER SHEAN: You are not.
11 Okay. Let's do that now.

12 Whereupon,

13 MICHAEL ROSKEY

14 was called as a witness and herein, after being
15 duly sworn, was examined and testified as follows:

16 HEARING OFFICER SHEAN: Okay. With
17 that, there is no necessity to voir dire this
18 witness, so we're at the point where we're going
19 to offer Mr. Roskey's testimony and his attached
20 Exhibits. Is there an objection to that?

21 MS. LUCKHARDT: I would object that the
22 testimony that's being offered goes beyond the
23 extension of the hearings that was offered today
24 to review the FDOC and the changes to the staff's
25 testimony. I feel that Mr. Roskey's testimony

1 delves into a variety of issues in air quality and
2 public health that should have been heard in the
3 previous hearing.

4 HEARING OFFICER SHEAN: All right.
5 Anything from the staff?

6 MS. HOLMES: Staff doesn't have
7 anything.

8 HEARING OFFICER SHEAN: All right.
9 While it might have been beneficial if all that
10 could have happened, I think under these
11 circumstances the committee is going to allow his
12 testimony and Exhibits into evidence.

13 If you would like to, Mr. Roskey, you
14 can briefly summarize your testimony, and then
15 you'll be subject to examination by the other
16 parties.

17 MR. ROSKEY: Okay. I appreciate your
18 indulgence here. I got into the game relatively
19 late, therefore it's been a matter of catching up,
20 and plus figuring out where the appropriate point
21 is to make any kind of input. So I appreciate the
22 opportunity.

23 Basically, I had heard quite a bit about
24 how particulate matter does affect public health,
25 the health of individuals who have to breathe it.

1 So I did some research into the area, and I
2 essentially found two articles which I felt were
3 contained in reputable journals, well-known
4 journals, ones that have the professional respect
5 of peers and so on.

6 The Journal of American Medical
7 Association and the other is Environmental Health
8 Perspectives. I'm less familiar with that one,
9 but I understand that it's federally funded in
10 part. At least this study was. And I do believe
11 it's put out by the National Institute of
12 Environmental Health.

13 And each of these studies found
14 significant impacts that I do not believe have
15 formed the basis of current rules and regulations
16 concerning emissions of particulate matter. And
17 if this Commission is serious about the health of
18 the people in the area I feel that these studies
19 need to be taken into account and considered.

20 One study was a longitudinal study that
21 was based on a sample that was started in 1982 by
22 the American Cancer Society of 1.2 million people.
23 It followed them through, in metropolitan areas,
24 through I think the late '90's, and attempts to
25 relate the causes to death to levels of pollution.

1 Obviously it's an association, it's a
2 correlation, but they found, after controlling for
3 a variety of factors and doing quite a bit of
4 extensive statistical analysis that, and may I
5 quote here, "each 10 microgram per cubic meter
6 elevation in long-term average PM-2.5 ambient
7 concentrations was associated with approximately a
8 four percent, six percent, and eight percent risk
9 of all cause cardiopulmonary, and lung cancer
10 mortality."

11 HEARING OFFICER SHEAN: May I ask you to
12 reference the document and page that you're
13 reading from, please? Oh, okay, this is at the
14 bottom of the second page that you're reading that
15 from.

16 MR. ROSKEY: Oh, okay, it's page 1137 in
17 the article.

18 HEARING OFFICER SHEAN: All right, thank
19 you.

20 MR. ROSKEY: Okay, I thought that was
21 pretty significant. So I thought what I'd try to
22 do is see, you know, if we did some sort of
23 geographic modeling and applied these numbers --
24 and this is relatively low-level statistics -- to
25 the populations that we might find, would we see

1 any deaths by these causes. And that's a part of
2 what I did.

3 The other part was that I found another
4 article that just recently came out, that's in
5 Environmental Health Perspectives. And it
6 discusses the effects of ultra-fine pollutants,
7 particle particulate pollutants, on cell lines
8 that are grown and incubated and exposed to these
9 particles, and what do they find. Well, they find
10 that it produces reactive oxygen series responses.

11 Now, don't ask me to explain that, but
12 it has to do, I'm sure, with organic chemistry,
13 and I think most sequences of chemical reactions
14 in organic chemistry are called series. So I
15 think that's part of what they're talking about.

16 But I think essentially what they're
17 pointing out is -- as I point out on the third
18 page of my testimony -- low levels, and this is a
19 quote again from their article, "low levels of
20 oxidative stress activate anti-oxidant defenses,
21 whereas higher levels of oxidated stress lead to
22 pro-inflammatory and cytotoxic effects.

23 Okay, this is nothing new, we've known
24 this from the literature so this is not, you know,
25 exciting revelation. But they did show it. The

1 other thing that they found which was unexpected
2 and which is, I believe, new is the mitochondrial
3 effects.

4 They found that the particles lodged in
5 the mitochondria of the cells and the cell lines
6 that they were raising in incubation, those cells
7 were actually -- epithelial cells and so on, I
8 think another series of cells that I think you'd
9 find in lungs -- mitochondria is a part of a cell,
10 and mitochondria is an essential part of the cell,
11 in that it produced, my understanding, is
12 metabolism, the energy that the cell needs, among
13 other things.

14 I think it also has to do with reverse
15 transcriptase (sp) or whatever you call it, but --
16 which is RNA -- they also say in their conclusions
17 and pertaining to mitochondria -- now I've lost
18 it. Well, I'll find it in the article, but they
19 said that the structural effects were significant
20 in the mitochondria, and I don't think they follow
21 through with actually discussing what the effects
22 are in terms of the function of the cell, or what
23 you could expect in terms of the effect on the
24 organism, but one could speculate.

25 And they do at a later point discuss the

1 proapoptic effects, which is cell death. And they
2 also talk about cytotoxic effects, so we can
3 assume that this probably has something to do with
4 an organism not functioning very well. Okay, now
5 there is nothing in this study that I can follow
6 through with in terms of public health, in terms
7 of numbers.

8 But I would like to point out that it
9 would explain the phenomenon of asthma that is
10 very frequent in association with atmospheric
11 pollution. In fact, my brother has it. And that
12 it would also explain the early deaths by, it
13 might have something to do with early deaths by
14 lung cancer and so on by the aged, and I offer
15 that as a possibility, speculative not proven.

16 What I tried to do then was to discuss
17 what I could find in terms of geography and
18 population relative to the level of significance
19 that I've seen cited, which is ten in a million,
20 which turns out to be one in 100,000, which is
21 deaths in 100,000 is the standard used in public
22 health for measuring effects of disease and so on
23 in the population.

24 And so that makes sense, one in 100,000
25 you would think is significant. I used, I started

1 with a discussion of ambient air quality because I
2 wanted to establish what I felt could be used for
3 a figure to cite in terms of levels of PM-2.5.

4 And basically what I did was use what's
5 in the application for certification, and I just
6 took what I found to be a mid-range in their
7 figures for an annual arithmetic mean, which, if I
8 understand it correctly is going to be a measure
9 of long-term exposure.

10 And this study of course by the
11 individuals in the Journal of American Medical
12 Association did find that long-term exposure was
13 significant, was the significant factor that they
14 did measure, that they did prove had an
15 association with, you know, death.

16 So I just took a mid-range, and it was
17 somewhere between 13 and 16 micrograms per cubic
18 meter. I also did discuss 24-hour averages
19 because that is significant in terms of the
20 findings of the other article, that it does
21 contribute to asthma. And I just put it in there,
22 I didn't use it any further.

23 I also found what the final staff
24 assessment put in there estimate as far as annual
25 arithmetic mean, and it was close, I think, if I

1 recall, to that figure posed by the Applicant. So
2 that's pretty much, I think, what I used.

3 Then I went on to discuss new source
4 pollution, and this of course is what I gleaned
5 from the literature I was reading. And I found
6 that the application for certification said that
7 .24 micrograms per cubic meter would contribute to
8 the annual arithmetic mean of PM-10 exposure and
9 that -- they didn't say anything about PM-2.5.

10 The FSA did estimate, I think, .09
11 micrograms per cubic meter -- well, I think it was
12 either .09 or .175 if you took 95 percent of what
13 they said would be the PM-10 emissions, and you
14 added them together. Okay, then I looked at
15 mortality rates, these are in tables that are
16 provided at the end, provided as exhibits.

17 And what I did was, we could only use
18 the figures up to 1998 because they used the same
19 classification for death that was used in this
20 study. And these figures are for Sacramento
21 County.

22 And so I looked at the causes of death
23 by mortality in Sacramento County using the
24 tables, and these are obtained from the Center for
25 Disease Control, via the Department of Health

1 Services. I'm not going to go over the numbers
2 because it's been a couple of days since I did
3 this, and I don't recall exactly where I was with
4 these numbers.

5 Let's see -- combined rates for either
6 cardiopulmonary causes or lung cancer would range
7 from a low of 29.9 per 100,000 in 1992, to a high
8 of 33.3 per 100,000 in 1997. And really it
9 depends, that would be the lowest figures that I
10 could extrapolate from the data.

11 There were higher figures -- let's see,
12 I'm not sure, they supplied ranges and I'm not
13 sure how that works. Anyway, then I looked at the
14 contribution by the proposed plant, the combined
15 rates from either cardiopulmonary causes or lung
16 cancer would range from a low of three -- this is
17 finally what I arrived at by means of these
18 calculations -- basically, the ten micrograms per
19 cubic meter that I originally cited, 3.4 per
20 100,000 to a high of 9.0 per 100,000.

21 So then I looked at demography. I think
22 that per 100,000 figure is higher than one per
23 100,000. But it doesn't mean anything if there's
24 nobody living there, so I looked at who lives
25 there. And I used census data for 1990 and 2000.

1 I do want to tell you that the figures I
2 have for 1990 I will ask you not to take a look at
3 because I don't think they're accurate, because I
4 think they used the wrong file there. I was using
5 some files that had been given to me by a
6 colleague and I think I mixed them up. But I
7 think the 2000 figures are correct.

8 Within a six mile radius from the site,
9 I found -- using the 2000 census -- 3,200 people,
10 and I think that's between the figures that the
11 staff found. I don't know why they had two
12 different figures, but they were on opposite ends
13 and mine was in the middle, so I figured that's
14 not too bad.

15 I also did a 12-mile radius, because for
16 one, Mr. Rubinstein mentions a 12-mile radius as
17 significant. And so I thought that would be a
18 reasonable extension considering that 2.5 travels
19 and stays in the air. I believe it was 24,491 in
20 the 12-mile radius, which is significantly more.

21 I also found by looking at the ages of
22 the people involved that -- and this is within the
23 12-mile radius -- that generally speaking the age
24 distribution was in the mid-range, in the 40's
25 predominately, but also in the 30's and 50's.

1 That in itself is not significant, given
2 the kind of pollution that we are talking about at
3 this point in time. But again it's long-term
4 exposure that counts, and I'll discuss that in a
5 second.

6 Of course, with the census you don't
7 have projections into the future, and it was hard
8 to find anything that would give specificity as to
9 the area that we're talking about, and the closest
10 I could come to with that was the traffic analysis
11 zone by the Sacramento Council of Governments.

12 It was actually pretty good, because I
13 don't think the Department of Finance gives
14 anything closer than county or city, and of course
15 there are no cities in this area except maybe a
16 portion of Elk Grove, within the 12-mile radius
17 that is.

18 And so, what I did was, again, another
19 geographic selection according to the 12-mile
20 radius and the traffic analysis zones, and found
21 that -- actually, there's that figure -- that the
22 population increased from 2,000 to 2,025 was a
23 factor that I felt I could use to estimate the
24 growth in population within the 12-mile area based
25 on the census.

1 And I just use their projections as a
2 factor, okay. I didn't really do more than that
3 because they don't really break down the
4 population that well, plus the traffic analysis
5 zones are not as small as the census blocks go.

6 And the census blocks, because they're
7 smaller, they're closer to the 12-mile in the
8 area, 212-mile radius. So I found what I felt was
9 a growth in the 12-mile radius from 51,388 to
10 88,475.

11 You multiply those by the factors that I
12 just gave you for mortality and you find that it's
13 significant, that it is more than one in 100,000,
14 in fact it's like three or four, somewhere in
15 there, deaths by these causes that could be found
16 from the numbers that I was able to extract for
17 the contribution of the Cosumnes Power Plant to
18 the area.

19 And so, I feel that the pollution that
20 this plant -- at least from the statistics that I
21 was able to produce -- is significant, and I don't
22 feel that they are being taken care of by the
23 mitigations, because that doesn't change the
24 output at all.

25 The staff dwelt on that matter in the

1 past testimony, saying that -- I believe it was
2 either them or it was Rubenstein -- that health
3 effects are determined independent of mitigations,
4 as they should be.

5 So, I offer this as one possible view of
6 the effects of this power plant, and I hope the
7 committee will take this into their deliberations.
8 Thank you.

9 HEARING OFFICER SHEAN: Thank you, Mr.
10 Roskey. Okay, do we have any -- I guess we'll
11 start with the Applicant?

12 MS. LUCKHARDT: I just have a couple.
13 Mr. Roskey, looking at the Pope study. That's a
14 nationwide study, isn't it?

15 MR. ROSKEY: Yes, ma'am, it includes
16 quite a few metropolitan areas, I think 40 or 50.

17 MS. LUCKHARDT: And the other study you
18 were referring to, the ultra-fine particulate
19 pollutants, that study was conducted in L.A. at
20 the L.A. basin?

21 MR. ROSKEY: Los Angeles area.

22 MS. LUCKHARDT: And then, on the Pope
23 study, isn't it true that the Pope study is based
24 on ambient air quality data?

25 MR. ROSKEY: I believe so, yes.

1 MS. LUCKHARDT: And isn't it true that
2 ambient air quality data takes into account all
3 sources of PM?

4 MR. ROSKEY: I would think so, yes.

5 MS. LUCKHARDT: And then, isn't it also
6 true that the Pope study does not speciate between
7 types of PM or types of particulate matter. It
8 doesn't make any determinations between whether
9 it's diesel particulate or something else. If you
10 could point out --

11 MR. ROSKEY: Oh, I see. Right. Where --
12 it's source?

13 MS. LUCKHARDT: Yes.

14 MR. ROSKEY: No, I don't think so.

15 MS. LUCKHARDT: Okay, thank you.

16 HEARING OFFICER SHEAN: Anything from
17 the staff?

18 MS. HOLMES: Nothing from us.

19 HEARING OFFICER SHEAN: Anything from
20 the Intervenor?

21 MS. PEASHA: I just would like to ask
22 Mr. Roskey, are you aware that the number one
23 pollutant is from gas-fired power plants?

24 MR. ROSKEY: I believe that's true.

25 MS. PEASHA: And second to diesel --

1 MS. LUCKHARDT: I'm sorry, the number
2 one pollutant for what?

3 MS. PEASHA: The number one pollutant
4 second to diesel engines --

5 HEARING OFFICER SHEAN: You mean
6 emission source?

7 MS. PEASHA: That's what I mean.

8 MS. LUCKHARDT: Are we talking
9 countywide, statewide, nationwide?

10 MS. PEASHA: We're talking statewide.

11 MS. LUCKHARDT: So if I were to go to
12 the ARB web page and look at -- or wherever you go
13 to get the inventory -- I mean, my concern is that
14 it assumes facts that are not in evidence.

15 HEARING OFFICER SHEAN: All right.

16 MS. PEASHA: Well, this was stated in
17 the Sacramento Bee in California section, and they
18 said that was the number one emission pollutants,
19 and that was gas-fired power plants. Second to
20 only diesel.

21 HEARING OFFICER SHEAN: All right.
22 We'll just make that a comment of yours, because
23 we've already discussed with Mr. Roskey while you
24 were not here his qualifications to testify as an
25 air quality expert. Since he agrees he's not,

1 he's not in a position to answer your question.

2 We'll take it as your public comments,
3 as the way we did Mr. Boyd and others.

4 Okay, Mr. Roskey, do you have anything
5 further? If not, we're happy to relieve you of
6 sitting on the hot seat.

7 MR. ROSKEY: No. I'd like to thank the
8 committee for taking my testimony. But I do have
9 public comment, too.

10 COMMISSIONER PERNELL: The committee
11 thanks you, Mr. Roskey, for the time you put in,
12 taking off from work to review the documents.

13 HEARING OFFICER SHEAN: Yes, and your
14 effort to go through these sources and come up
15 with your testimony. Thank you. Okay, while
16 we're still on direct stuff, I think that takes
17 care of air quality, we already have discussed
18 hazmat and worker safety, and that leaves us with
19 traffic and transportation, and I --

20 MS. PEASHA: Excuse me, Commissioner?

21 HEARING OFFICER SHEAN: Yes, go ahead.

22 MS. PEASHA: I have a couple of
23 questions for the Applicant regarding air quality.
24 Two quick questions, because I wasn't here, I ran
25 home, I just want to ask two quick questions of

1 the Applicant.

2 HEARING OFFICER SHEAN: They haven't put
3 anybody on or offered anything--

4 MS. PEASHA: Are you going to?

5 HEARING OFFICER SHEAN: We don't know.

6 MS. PEASHA: May I have one -- I can
7 just ask Colin or Kevin?

8 HEARING OFFICER SHEAN: Let us -- if
9 anything happens, it's going to be on rebuttal.
10 Let's just walk through the order here, because
11 rebuttal is after this subject.

12 And on traffic and transportation, this
13 essentially had been a committee request, and I
14 guess the parties have attempted to address this
15 to some degree by the addition into condition
16 trans five of the issue of whether road signs
17 should be installed along Twin Cities Road to
18 inform drivers of school bus zones. Is that the
19 extent to which --?

20 MR. COHN: Yes. Actually, I hopefully
21 can shortcut this a little bit, because staff has
22 admitted additional conditions in three areas --
23 waste management, traffic and transportation, and
24 noise and vibration -- indicating that we were in
25 agreement on two and there was a slight

1 disagreement on traffic and transportation.

2 Actually, in discussions we've had today
3 with the witness who had to leave -- Eileen
4 Allen -- I don't think there's even disagreement
5 on traffic and transportation. There was some
6 confusion about what was intended by the word
7 "conduct", which was the one word that was
8 different between the staff version of trans nine
9 and the Applicant version.

10 But we subsequently have discussed that,
11 and as long as that's understood that that can
12 either be in person or by video, we're fine with
13 the language proposed by staff.

14 HEARING OFFICER SHEAN: All right. The
15 lingering thing for the committee is how are we
16 going to address making sure that, to the extent
17 feasible and practicable, that workers -- supply
18 drivers, etc. who will be commuting to the site,
19 or delivering to the site, and thus increasing
20 traffic during normal school days, even though
21 they're trying to stay off normal school bus
22 pickup times, if I understand correctly -- that
23 there is essentially sufficient public notice that
24 there are school bus stops along the route of
25 commuter delivery, and there will be children

1 present, and I guess --

2 MR. COHN: And that was the intent of
3 these modifications to trans five, nine, and ten,
4 was to address that issue. And Mr. Hudson or Mr.
5 Taylor can answer if you would like to direct
6 questions to them specifically about those
7 conditions. We'd be happy to -- or to summarize
8 how we think this might help address those
9 concerns.

10 HEARING OFFICER SHEAN: All right. Let
11 me just say, I think the only reason I'm thinking
12 of this with respect to the signage is that I have
13 -- I can't recall the location but I know I saw
14 it, with regard to signs that were along the
15 relatively rural road, and I think this could have
16 been in the Tahoe area or something like that --
17 advising people that there were school bus stops
18 ahead.

19 And I guess the committee wants to make
20 sure that not only did we do the minimum, we do as
21 much as is feasible to assure that there are no
22 students out here who are going to be injured by
23 traffic that's project-related. So, if you think
24 that's sufficient, we'll deliberate it.

25 MR. COHN: Well, of course, keep in

1 mind, the trans five outlines the types of things
2 that will be in the traffic control plan, and then
3 we will actually submit that prior to site
4 mobilization, so the staff compliance project
5 manager will review that at that time, and will of
6 course be working with the county as well, the
7 city of Elk Grove, CalTrans, and so on, depending
8 on where the construction is.

9 HEARING OFFICER SHEAN: What has
10 occurred to me, and I'm not a traffic engineer or
11 anything else, is something like a temporary
12 construction sign, which are orange as opposed to
13 yellow, maybe with or without a flashing light on
14 it, indicating that there are stopping school
15 buses for the next number of miles.

16 MR. COHN: Right. And that's actually
17 listed as one of the items -- it didn't say yellow
18 -- but that there'd be road signs installed to
19 inform drivers of school bus zones, was actually
20 added under trans five.

21 HEARING OFFICER SHEAN: All right.
22 Well, that's the kind of thing at least that's
23 occurring to me, as an informed citizen non-
24 expert, to me. Okay.

25 MS. HOLMES: Can we have this admitted

1 into evidence at this time? Excuse me, by this
2 I'm referring to the revised conditions of
3 certification that staff filed.

4 HEARING OFFICER SHEAN: I guess we can,
5 and I would do it as an unmarked Exhibit simply
6 because the conditions are not factual testimony
7 but proposals on behalf of the staff and the
8 applicant, and ultimately is at the complete
9 discretion of the committee and Commission.

10 So, yes, they're in. Now, do we have
11 rebuttal testimony on anything that we had today.

12 MS. HOLMES: Staff has rebuttal
13 testimony.

14 HEARING OFFICER SHEAN: The Applicant,
15 having the burden of proof, we'll ask if you have
16 something you want to present?

17 MS. LUCKHARDT: I think at this point
18 we'll see what the testimony of Mr. Ringer is, but
19 we will assume that we would not need to bring Mr.
20 Rubinstein back, which would be tomorrow.

21 HEARING OFFICER SHEAN: Okay, staff, go
22 ahead.

23 MS. HOLMES: Staff's rebuttal witness is
24 Michael Ringer. He's previously been sworn, but
25 has not been qualified as a public health expert,

1 so I'd like to begin by doing that. Mr. Ringer,
2 can you please explain what your responsibilities
3 are at the Energy Commission with respect to
4 public health analyses?

5 MR. RINGER: I'm currently Unit Senior
6 at the Energy Commission. I'm Supervisor of the
7 Air Quality Public Health and Waste Management
8 Unit. I've been in that position for about two
9 and a half years.

10 Prior to that I have done public health
11 analyses at the Energy Commission probably for
12 about maybe 15 projects, and I've been in the
13 environmental unit since 1987.

14 MS. HOLMES: Thank you, if we can
15 qualify him on that brief summary I think it would
16 expedite matters.

17 HEARING OFFICER SHEAN: All right. Is
18 there objections to his qualifications to testify
19 as an expert? Hearing none, he is so qualified.

20 MS. HOLMES: Thank you. Mr. Ringer,
21 could you please provide some rebuttal testimony
22 to the testimony of Mr. Roskey, and we are
23 particularly interested in hearing your
24 professional opinion as to whether or not it is
25 appropriate to conclude that this project will

1 result in between three and nine deaths per year
2 from cardiopulmonary causes or from lung cancer by
3 2025?

4 MR. RINGER: Let me begin by saying no,
5 that's not an appropriate conclusion, so I
6 disagree with that. And, as part of my
7 explanation, let me go through and talk about Mr.
8 Roskey's testimony and some of the work that's
9 been done lately in setting health based standards
10 for particulate matter.

11 First of all, I would like to say that
12 Mr. Roskey is actually correct in his concerns
13 regarding potential health effects of particulate
14 matter in the proposed project. In fact, in his
15 introduction to his testimony he lays the
16 foundation for his concerns and staff agrees with
17 the basic premises in his introduction.

18 But we do not agree with the conclusions
19 that he reaches, or the method by which he reaches
20 them. In his introduction he does say that the
21 emissions from the proposed project would
22 contribute to levels of pollutants that already
23 exceed accepted minimum standards. That is
24 certainly correct.

25 Recent environmental health research

1 shows that existing pollutants already endanger
2 lives at levels that current rules, regulations
3 and laws sanction with minimum requirements that
4 are far in excess of what is needed.

5 We do agree that there is quite a bit of
6 recent health research that shows the health
7 effects that are associated with the current
8 levels of particulate matter that exist in most
9 areas of California and indeed the United States.

10 And that, the third point that he talks
11 about in his introduction, "without substantial
12 mitigations the proposed power plant would
13 increase predictable mortality." We agree that,
14 absent mitigation, there would be health effects,
15 and that is the point of staff's air quality study
16 to a great degree, and staff's air quality
17 analysis and the related public health analysis.

18 Because of the fact that particulate
19 matter would be emitted by the Cosumnes plant into
20 an area that exceeds the ambient health-based
21 standards, that is the precise reason that staff
22 has asked for mitigation, and we heard testimony
23 earlier today that staff is of the opinion that
24 the impacts are fully mitigated, especially in the
25 winter seasons when most of the health effects

1 would occur.

2 That having been said, Mr. Roskey goes
3 through an exercise which uses some of the health
4 effects research data, and concludes that there
5 are a certain number of mortalities that would
6 result from operation of the plant.

7 The problem with that is -- his pages
8 are not numbered, but -- under "new source
9 pollution", which I believe is at the bottom of
10 page six, he quotes from the final determination
11 of compliance, and following that he quotes from
12 the AFC and some of the FSA estimates of the
13 levels in terms of micrograms per cubic meter of
14 particulate matter that would be emitted from the
15 plant.

16 Well, that's true, and these are the
17 levels that would be emitted, and increase ground-
18 level impacts. These are also the levels that
19 lead staff to conclude that, because these would
20 contribute to existing violations, mitigation is
21 indeed required.

22 So, further on, in page eight, where Mr.
23 Roskey applies certain factors based on results of
24 the studies to conclude that there are mortality
25 effects, the whole point of staff's proposing

1 mitigation is to indeed cancel out the effects
2 from the power plant, so that the micrograms per
3 cubic meter that was cited earlier as the basis
4 for some of these calculations.

5 In fact, with the mitigation, staff's
6 whole point in proposing mitigation would be such
7 that the mitigations would completely offset the
8 influence of the plant, so that the after levels
9 equal the before levels.

10 In other words, the ambient air after
11 operation of the plant would be no worse off than
12 it was before the operation of the plant. So, in
13 that regard, it doesn't make any sense to apply
14 specific numbers and to derive some sort of
15 mortality effects because of that.

16 Even if one could do that, Mr. Roskey
17 has taken these levels that have been quoted
18 here -- which are actually maximum impact levels
19 and they occur at specific locations -- and he
20 applies those levels to entire populations.

21 Even if one were to go through this type
22 of exercise, what you would want to do is to try
23 and do some kind of a weighted calculation such
24 that, as you move away from the point of maximum
25 impact, the resultant concentrations would

1 decrease, so you'd actually use the lesser
2 numbers, and apply it to whoever is exposed at
3 that point.

4 But as I said previously, this whole
5 exercise is not especially relevant, because of
6 the fact that we expect the post-plant levels to
7 be similar to pre-plant levels. And, what I'd
8 like to do also is go into some brief descriptions
9 of some of the studies, what they're being used
10 for.

11 When I say that the reason that staff is
12 asking for mitigation is because this plant would
13 contribute to exceedances of the health standards,
14 those health standards are based on studies such
15 as the one Mr. Roskey cites, and in fact includes
16 those studies, as well as literally dozens if not
17 hundreds of additional studies.

18 The Office of Environmental Health
19 Hazard Assessment, OEHHA, which is a state agency,
20 has just completed a review of many, many, health
21 studies. The California Air Resources Board has
22 taken that into account.

23 There's been numerous public hearing and
24 scientific review panel review of these studies,
25 and in fact the 24 hour standard for particulate

1 matter has been maintained at the current level,
2 and there's been changes and additions to the
3 other standards.

4 A PM-2.5 standard has been added, once
5 it gains approval by the Office of Administrative
6 Law. And there's an annual standard as well. And
7 these standards are all based on the studies that
8 Mr. Roskey cites, as well as others.

9 These standards are meant to protect
10 nearly everybody in the California population with
11 an additional margin of safety such that the most,
12 the people who are at the greatest risk to health
13 effects -- and this is people with existing
14 conditions, cardiovascular, cardiopulmonary,
15 health conditions, the infants, the aged, people
16 like that -- are all brought under the umbrella of
17 protection with these new standards.

18 It is true that there is no identifiable
19 threshold beyond which no health effect occurs,
20 but the standard has been set such that almost
21 everybody is protected. There is no requirement
22 in the state law that there be a standard set at a
23 zero risk level, but merely that adequate
24 standards be applied.

25 So this has been the subject of very

1 recent study. In fact, as I mentioned, the Office
2 of Administrative Law still has to do the final
3 okay on these. These standards protect against
4 mortality, and that having been said, the studies
5 found no particular level below the standards by
6 which morbidity effects would occur.

7 So that by protecting against mortality,
8 which is obviously by far the most serious health
9 effect, you also automatically protect against
10 morbidity or additional sicknesses in the
11 population.

12 So for those reasons, we believe that
13 this testimony misses the mark in its conclusions,
14 although it starts out correctly in its concerns
15 with the fact that yes, there are additional
16 amounts of particulate matter that would be
17 emitted into the air into an already unhealthy
18 area.

19 And that is why staff has proposed the
20 mitigation, because we feel that if additions are
21 made into an already unhealthy level of air, that
22 indeed they need to be mitigated. So that
23 concludes my summary of why we disagree with the
24 conclusions in Mr. Roskey's testimony.

25 MS. HOLMES: Can I ask just a couple of

1 follow-up questions?

2 HEARING OFFICER SHEAN: Uh-hmm.

3 MS. HOLMES: The models that are used to
4 predict ground-level concentrations -- do they
5 tend to be conservative in nature?

6 MR. RINGER: They tend to be
7 conservative, yes.

8 MS. HOLMES: So it would be fair to say
9 that they tend to overstate ground-level impacts?

10 MR. RINGER: That's in general what
11 they're designed to do.

12 MS. HOLMES: And, based on your
13 experience in doing public health analyses, do you
14 have an opinion as to whether or not it is
15 appropriate to extrapolate from epidemiological
16 studies to project-specific impacts?

17 MR. RINGER: In general it's not that
18 appropriate.

19 MS. HOLMES: But it is appropriate to
20 use those types of studies to establish health-
21 based standards by regulatory agencies?

22 MR. RINGER: Correct. And that's done.

23 MS. HOLMES: And to your knowledge, the
24 most recent review of the health-based standards
25 by ARB, did they include the most recent

1 scientific research that's been done on the health
2 effects of particulates?

3 MR. RINGER: Yes. Especially in the
4 past ten years, there's been a big increase in the
5 number of studies available, and continuations of
6 studies that started years ago.

7 MS. HOLMES: And do some of those
8 studies address specifically questions having to
9 do with the health impacts of the fine and the
10 ultra-fine particulates?

11 MR. RINGER: That's correct.

12 MS. HOLMES: And then lastly, you
13 offered a bit of discussion about the fact that
14 staff was requiring mitigation for this project.
15 Is it your testimony that this project is
16 mitigated with the staff's conditions of
17 certifications such that it will not contribute to
18 any significant adverse health impacts?

19 MR. RINGER: Correct.

20 MS. HOLMES: Those are all my questions.

21 HEARING OFFICER SHEAN: All right.
22 Anything from the Applicant?

23 MS. LUCKHARDT: I have no questions.

24 HEARING OFFICER SHEAN: Mr. Roskey?

25 MR. ROSKEY: I do have a couple of

1 questions. Number one, why is everybody referring
2 to everybody else as doctor and me as mister, but
3 that doesn't matter necessarily, I just note that,
4 as an Intervenor, one has a subordinate status.

5 I would like to ask just a couple
6 questions, just because I think this is a matter
7 of interest, and I find his responses intriguing.

8 Is it known, Mr. Ringer, is all the
9 research in as far as the effects of PM-2.5 and
10 smaller on the human organism, and if not, do you
11 expect that the research will point out that
12 findings at this point are in fact wrong, and that
13 there is no significant effect?

14 MR. RINGER: I'm not quite sure I
15 followed the very last part of that. No, research
16 is continuing, so it's not all in. Do I think
17 that there will be findings that will lead to the
18 conclusion that we're wrong about PM-2.5?

19 Well, I would say that everybody agrees
20 that PM-2.5 is a very serious, real issue. So, I
21 would think that that would remain as a common
22 belief.

23 MR. ROSKEY: Maybe my question is more
24 ironic than it should be. What is the -- am I
25 correct in assuming that the tendency of the

1 research is to find that the effects of these
2 particles on the human organism have been
3 underestimated?

4 MR. RINGER: The research is showing
5 more precisely what the effects are. The research
6 is becoming more exact in ferreting out the causes
7 of the problems and the other side of the coin
8 would be sort of eliminating some of the factors
9 that confound what some of the health effects are.

10 In other words, saying what's not the
11 problem, or things that may not be related to
12 particulate matter. And -- I forget what else I
13 was going to say. Basically, the research is
14 confirming that yes, there are serious problems --
15 oh, and the other thing was, there has always been
16 a lack of information on the exact mechanism of
17 actions.

18 For a long time people knew that
19 particulate matter was a problem, and there was
20 nothing they could point to as to why it was a
21 particular problem. Now there's a lot of
22 information that's being brought forth from these
23 studies on how the exact mechanism of action of
24 particulate matter, what that mechanism of action
25 is.

1 Until you know such a mechanism of
2 action you can only do statistical studies, and
3 you can only make statistical inferences on what
4 the cause is. So, in other words, you've heard of
5 the Super Bowl effect on the stock market, well,
6 that's a statistical inference, and yet there's
7 obviously no connection between the Super Bowl and
8 the stock market.

9 Well, with particulate matter the same
10 has been true for a number of years, but now we're
11 starting to find out exactly what happens when a
12 particle enters the body and how it affects the
13 health. And you've alluded to a lot of that in
14 your testimony.

15 MR. ROSKEY: Can I continue? I would
16 disagree with your analogy, but I do believe
17 you're on to something there as far as causation.
18 Can I ask you, has the ARB considered this article
19 that I've cited here, that came out in April of
20 this year, concerning the effects of ultra-fine
21 particulate matter on cell organisms?

22 MR. RINGER: I'm not sure if the single
23 particular article you mentioned is considered,
24 given the late date of the article and when the
25 ARB and OEHAA staff report came out.

1 But given that there were upwards of
2 probably hundreds of references in there, and the
3 author you cited is the author of a number of past
4 articles as well, and this is a continuation of
5 his research, that I think a lot of that was
6 already known.

7 MR. ROSKEY: The effects on
8 mitochondria?

9 MR. RINGER: Yes.

10 MR. ROSKEY: Yes?

11 MR. RINGER: Like I say, I'm not sure if
12 the particular article is included, but this is a
13 continuation of a lot of research that's been
14 ongoing.

15 MR. ROSKEY: And I understand that there
16 were hearings or something that you were alluding
17 to?

18 MR. RINGER: Yes.

19 MR. ROSKEY: When did those take place?

20 MR. RINGER: The staff report was
21 released on May 3rd, 2002. There were hearings
22 around that time of --

23 MR. ROSKEY: The ARB? I think those
24 were the ones that I heard you mention?

25 MR. RINGER: The what?

1 MR. ROSKEY: The ARB hearings were in
2 May of this year?

3 MR. RINGER: Last year. I think they, I
4 don't know the exact date of the hearings. The
5 scientific review panel considered the original
6 standards, they had some comments. A new standard
7 was proposed that wasn't in the original package,
8 and then there was subsequent comments on that.
9 And it was withdrawn.

10 And so there's been a series of
11 hearings, I don't know the exact dates of all the
12 hearings, but as I had mentioned, it's so recent
13 that these haven't even made it through the Office
14 of Administrative Law yet.

15 MR. ROSKEY: I understand that takes
16 awhile. Can I ask you questions on a different
17 subject? You mentioned something about distance
18 calculations as far as air pollution is concerned.

19 I understand that staff has argued in
20 the past that PM-2.5 is pretty well ubiquitous,
21 once it's out there it's everywhere, and so they
22 don't make distance calculations for mitigation
23 purposes for PM-2.5, and yet you say that I should
24 have included a distance calculation in
25 considering effects of PM-2.5 in my study?

1 MR. RINGER: No, that's not what I said.
2 The way -- what you did was you took a point of
3 maximum impact and assumed that the entire
4 population is exposed to that same level. When in
5 fact the computer model estimates ground-level
6 concentrations, and one can draw isoplattes (sp)
7 using those estimates.

8 So it's a real world phenomenon that,
9 basically, if you have a wind current or something
10 to direct a plume down to the ground that there
11 will be an area that has the highest
12 concentration. And away from that area the
13 concentrations decrease.

14 So given the fact that you're depending
15 on this model, and you want to do some
16 calculations, the same would be true of cancer
17 risk, for example. But in any case, only a
18 certain number of people are going to be exposed
19 to the highest level of concentration and once you
20 get away from that it decreases.

21 So it doesn't make any sense to assume
22 that everybody is going to be exposed to the same
23 highest level.

24 MR. ROSKEY: I'm not sure if this is
25 within your area of expertise, but is PM-2.5

1 concentration pretty much unvarying throughout the
2 region of this Sacramento area?

3 MR. RINGER: Once the PM-2.5 is emitted,
4 it does tend to stay in the air longer than the
5 coarse particulate fraction, and as such it would
6 become dispersed throughout a region. So once
7 it's emitted, given enough time, it disperse
8 throughout the region.

9 So if you had a plume, for example, and
10 did measurements and went back two weeks later to
11 that single plume, you would expect tat to have
12 dispersed, and the entire average for say, the
13 large scale readings over a wider area, would sort
14 of even out. I'm sure you're referring to
15 something like that.

16 But when the plume is actually modeled
17 at a particular time there is higher and lower
18 concentrations, it's just that they do tend to
19 even out, you know, months and weeks after that.

20 MR. ROSKEY: Again, I would ask you --
21 this is according to a model that is proposed by
22 the Applicant in which the staff person has said
23 is approved by EPA for analyzing emissions?

24 MR. RINGER: Correct.

25 MR. ROSKEY: Okay. Have you ever done

1 any survey tests in the area to determine, or has
2 anybody on staff, or who would I ask, have there
3 been any tests done anywhere?

4 MR. RINGER: I haven't, the staff has.

5 MR. ROSKEY: Except for the one site at
6 T Street, I think it is.

7 MR. RINGER: Staff has not done any
8 ambient air quality testing of its own. Staff,
9 along with the district, uses EPA-approved models,
10 which are the subject of some scrutiny.

11 MR. ROSKEY: Thank you.

12 HEARING OFFICER SHEAN: Ms. Peasha?

13 MS. PEASHA: Thank you. I have a couple
14 of questions for you, Mr. Ringer. You say that
15 the increase is higher in PM-10 concentrations in
16 the winter months. Is that because of the
17 weather, the rain, and so the concentration on
18 ground is higher because of the fact that the rain
19 is knocking these particulates down?

20 MS. HOLMES: Can I ask a question of
21 clarification? Are you asking him about
22 ambient --

23 MS. PEASHA: The plumes, the plumes.

24 MS. HOLMES: -- about ambient
25 concentrations or about the project's impacts?

1 MS. PEASHA: The project's impact from
2 the plumes on the concentration near or around the
3 area of the site, would that be affected with
4 rain?

5 MR. RINGER: Well, rain would tend to
6 wash things out, but in general --

7 MS. PEASHA: Wash it out of the ground,
8 or wash it out of the air?

9 MR. RINGER: Well, there's two things.
10 On those days that it rains, it would tend to wash
11 it out of the air. On the days that it doesn't
12 rain, in the wintertime, you tend to have
13 inversions which trap pollutants that are emitted
14 from any source.

15 So, because of the lower inversion
16 levels in the wintertime, and when you have
17 stagnant air days, that's why you have problems
18 associated with combustion, such as not only from
19 this plant, but -- that's why we see problems with
20 areas that have a lot of fireplaces.

21 MS. PEASHA: So would putting in low-
22 emissions inserts in fireplaces, would that help
23 with the concentrations that you've just
24 mentioned?

25 MR. RINGER: It would help with the

1 overall emissions from an area. I don't have
2 anything bad to say about fireplace inserts.

3 MS. PEASHA: Can we assume that the
4 distance away from the proposed power plant are
5 going to affect -- the closer you are to the power
6 plant, the higher health risk that you have
7 because of the concentrations?

8 MR. RINGER: It just depends on what the
9 worst-case day is. In answering this question, I
10 have to refer to some of my experience with the
11 air toxics modeling, which actually is based on
12 the same computer models, but it just depends on
13 what the meteorology is, and what the topography
14 is.

15 I've seen cases, albeit unusual, where
16 the worst-case impacts were several miles from the
17 facility, and in the opposite direction of the
18 prevailing winds. Because in the one particular
19 day the worst-case happens to be going against the
20 grain. So it's hard to make generalizations.

21 MS. PEASHA: That's reassuring since I
22 live upwind from this place. Do they take into
23 consideration diesel emissions during the
24 construction of the power plant for air quality
25 health-based standards?

1 MR. RINGER: The standards themselves
2 are indifferent to the source. It only talks
3 about particulate matter. But diesel does emit
4 particulate matter to the extent that that does
5 contribute to the ambient particulate levels, and
6 more specifically the public health assessment
7 does take into account diesel emissions
8 specifically. But that's also -- it's actually
9 part of air quality and health both.

10 MS. PEASHA: Thank you. I have nothing
11 further.

12 MS. HOLMES: I just want to ask a couple
13 of clarifying questions, because I think there's
14 some confusion about the modeling that gets done.
15 Mr. Ringer, is it correct that when air quality
16 modeling is done to determine maximum levels of
17 ambient concentrations that worst-case
18 meteorological conditions are used?

19 MR. RINGER: Correct.

20 MS. HOLMES: And the model is designed
21 to produce the maximum level of impact under any
22 reasonable circumstances, and that would include
23 worst-case meteorological conditions and worst-
24 case operating assumptions?

25 MR. RINGER: Well, the assumptions that

1 are input into the model, including those items,
2 are generally worst-case. And then the model
3 actually does calculations for every hour of the
4 year. So, to the extent that the results that we
5 look at are the highest of those hours, yes. It's
6 all designed to predict high levels, to over-
7 predict.

8 MS. HOLMES: So the highest level is the
9 highest hour in a given year under maximum
10 operating conditions and worst-case meteorological
11 conditions?

12 MR. RINGER: It's a combination of
13 conditions that produce the highest level.

14 MS. HOLMES: Right. And we've talked
15 about it as the maximum concentration, but as I
16 understood you earlier, it's actually a relatively
17 small area away from which concentrations would
18 expect to decrease?

19 MR. RINGER: By definition, yes.
20 Everywhere else is lower.

21 MS. HOLMES: I think that's enough.

22 HEARING OFFICER SHEAN: It's a lot
23 clearer too. Thank you, Mr. Ringer. You're
24 excused. All right. Applicant want to --?

25 MR. COHN: We have no need for cross and

1 rebuttal.

2 HEARING OFFICER SHEAN: Okay. That
3 would at least conclude everything we've listed
4 for today. Before we move further on, is there a
5 true member of the public who would like to make a
6 comment here before we part? Seeing no one
7 volunteering.

8 Okay, we have to figure out where we're
9 going to go from here. First of all, I can
10 indicate that we already know that there are
11 transcripts out from the past proceeding.
12 Transcripts from this will take somewhere on the
13 order of two weeks or more to get.

14 MR. COHN: Can we go off the record for
15 a moment?

16 HEARING OFFICER SHEAN: Yeah, we can do
17 that.

18 (Off the record.)

19 HEARING OFFICER SHEAN: Back on the
20 record. On when?

21 COMMISSIONER PERNELL: Phase one.

22 HEARING OFFICER SHEAN: Oh, phase one.

23 MS. HOLMES: -- hearings on phase one on
24 May 28, and having open briefs on phase two
25 jointly with any reply brief on phase one, on June

1 13th, provided that the transcript is made
2 available no later than May 30th. If the
3 transcript is not we'd have a day for day slip of
4 the briefing schedule.

5 And a reply brief for phase two would be
6 due seven days after the opening brief, and
7 provided everyone does electronic service.

8 Now, Ms. Peasha has said that she wants
9 to have an extra week. Staff doesn't have an
10 opinion one way or the other about it. We can do
11 the schedule that we just discussed, we can do one
12 week later.

13 One of the things that staff does not
14 want to do is have the Intervenor on a different
15 filing schedule than staff and the Applicant.
16 That we would have a problem with, which is I
17 think what Mr. Cohn just suggested.

18 COMMISSIONER PERNELL: Well, let me ask
19 Ms. Peasha. Are going to sit down and write a
20 brief?

21 MS. PEASHA: Of course. I'm going to --

22 COMMISSIONER PERNELL: Okay, that's
23 fine.

24 HEARING OFFICER SHEAN: And do you have
25 some comments with respect to the schedule, when

1 you wanted it to be?

2 MS. PEASHA: I wanted to push it back to
3 June 4th for the first set of hearings. And then,
4 another week after the June 13th deadline for the
5 second set of testimony.

6 HEARING OFFICER SHEAN: Okay. Let me
7 ask you, what do you mean by -- do you mean the
8 phase one and the phase two of the projects?

9 MS. PEASHA: No, I'm sorry. I was
10 dividing the hearings up into two phases.

11 HEARING OFFICER SHEAN: Oh, all right.

12 MS. PEASHA: I didn't mean to confuse
13 you unnecessarily.

14 HEARING OFFICER SHEAN: I just want to
15 make sure I understand. So what you had in mind
16 is hearing set one and hearing set two,
17 essentially. All right.

18 MR. ROSKEY: I'd like to say that I
19 agree with Ms. Peasha. You know, I'm really tired
20 of having my life crunched all over the place at
21 SMUD's convenience.

22 HEARING OFFICER SHEAN: Well, let me
23 just say, it would be unprecedented to squeeze the
24 public this way. It's a little bit unprecedented
25 to squeeze the staff this way, but if you agree to

1 put your neck in the noose, it's not up to me.

2 However, with respect to Ms. Peasha, I
3 don't have a problem with giving yo some
4 additional time, so if this is what the staff and
5 the Applicant have agreed to, and this is what you
6 need, we'll do it that way.

7 MS. PEASHA: Thank you.

8 HEARING OFFICER SHEAN: All right. Is
9 there anything further?

10 MS. PEASHA: I'd just like to make one
11 closing comment. To thank the Commissioners,
12 thank you very much for hearing us out. And
13 thanks to the Public Advisor's office, to Roberta
14 and her staff, which includes Penny, was very
15 helpful. And thank you for the food and
16 everything, that was great. Thanks for your help,
17 and your patience.

18 HEARING OFFICER SHEAN: All right.
19 We'll send a little something out on the briefing
20 order. And thank you all. And we'll go off the
21 record.

22 (Whereupon, at 9:17 p.m. the hearing was
23 adjourned.)

24

25

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I, PETER PETTY, an Electronic Reporter,
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